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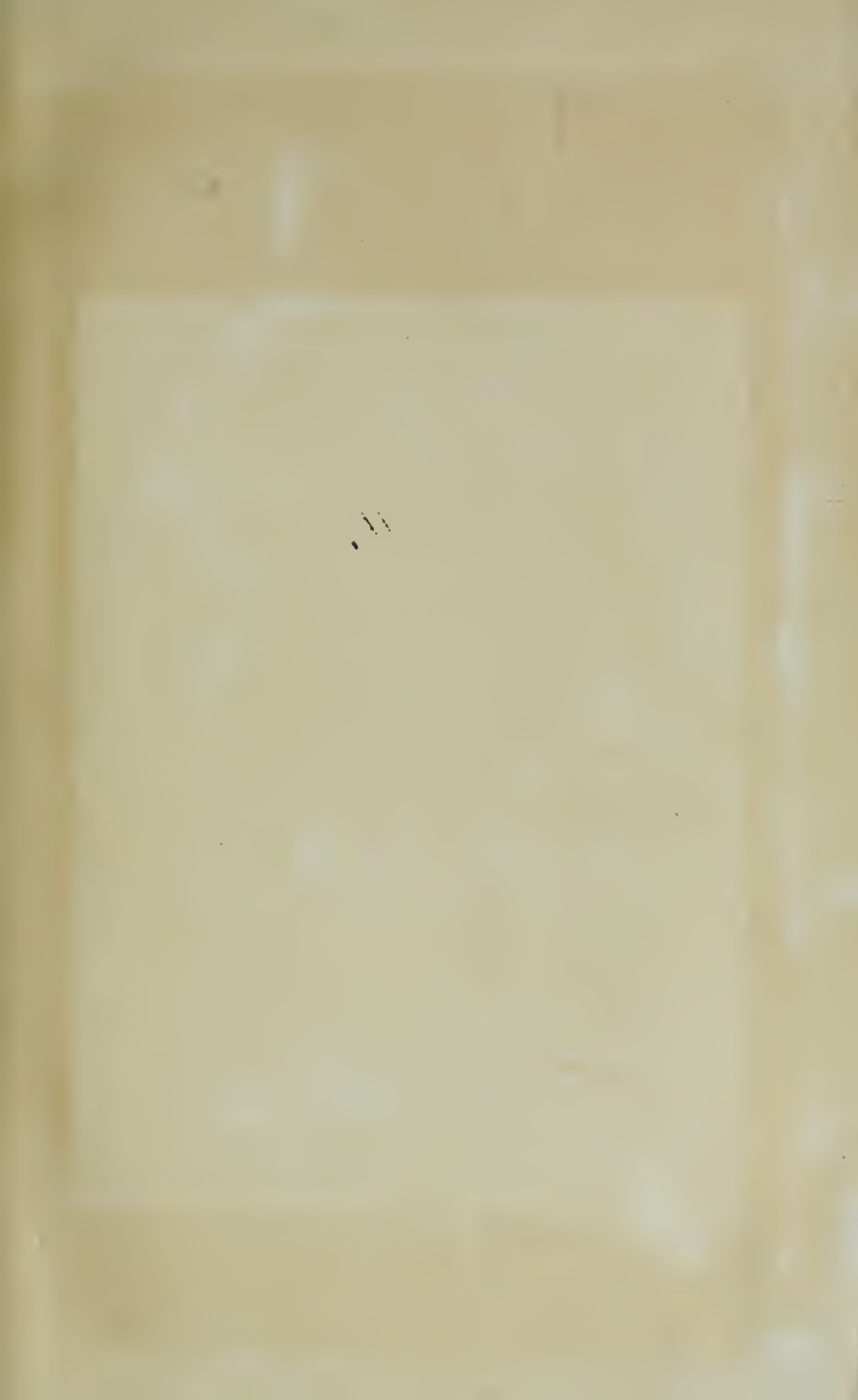
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IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TESTIMONY

Taken in U. S. Circuit Court of Appeals.

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
Appellant,

vs.

CHARLES H. NEWMAN,
Appellee,

AND

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
AND J. S. GOLDSMITH AND F. M.
GRAHAM, STIPULATORS, ETC.,
Appellants,

vs.

CHARLES H. NEWMAN,
Appellee.

VOL. 1


(Pages 1 to 256 Inclusive)

Appeal from the District Court of the United States for
the District of Washington, Northern Division.

FILED

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*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

J. F. HIGGINS, Master of the Steam- ship "Homer," et al.,	Appellants,	} No. 598.
vs.		
CHARLES H. NEWMAN,	Appellee.	

Order Continuing Appeal, to take Further Testimony, etc.

This cause coming on for hearing on the application of appellants for a continuance of the above-entitled cause and for permission to take additional testimony, and the Court being advised grants said application.

It is ordered that said cause be continued to be heard at the September term of said Court, to be held in Seattle, Washington. To which appellee excepts and his exception is allowed. And that appellants have until the 15th day of June, 1900, in which to take additional testimony; and that appellee have fifteen days thereafter in which to take any counter testimony he may desire. To which appellee excepts and his exception is allowed.

That A. C. Bowman, of Seattle, Washington, be appointed as commissioner to take such testimony, and is directed to make prompt return of all testimony taken before him, to this Court, and to close the taking of testimony on behalf of appellants on said 15th day of June.

1900, and on behalf of said appellee on the 1st day of July, 1900. To which appellee excepts and his exception is allowed.

[Endorsed]: Order. Filed May 9, 1900. F. D. Monckton, Clerk.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order filed in the cause entitled *J. F. Higgins et al. vs. Charles H. Newman*, No. 598, as the original thereof remains of record in my office.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this twenty-eighth day of June, A. D. 1900.

[Seal]

F. D. MONCKTON,

Clerk, United States Circuit Court of Appeals for the
Ninth Circuit.

[Ten Cent U. S. Int. Rev. Stamp Canceled.]

[Endorsed]: No. 598. United States Circuit Court of Appeals for the Ninth Circuit. *J. F. Higgins et al., Appellants, vs. Charles H. Newman*. Certified copy of Order Continuing Appeal to September, 1900, Term, etc.

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

J. F. HIGGINS, Master SS. "Homer," et al.,	Appellants,	} No. 598.
vs.		
CHARLES H. NEWMAN,	Appellee.	

Testimony.

To the Honorable, the Judges of the above-entitled
Court:

Pursuant to the order of reference made herein on the
9th day of May, 1900, now, on this 23d day of May, 1900,
the appellants appeared by Messrs. Metcalfe & Jurey,
their proctors, and the appellee appeared by William
Martin, Esq., one of his proctors, and thereupon the fol-
lowing proceedings were had and testimony offered:

APPELLANTS' TESTIMONY.

MICHAEL KELLY, a witness called on behalf of the
appellants, being first duly sworn, testified as follows:

Mr. MARTIN.—Before any testimony is taken in this
case, I interpose an objection to appellants taking any
testimony, first, for the reason that the Circuit Court of
Appeals of the Ninth Circuit had no jurisdiction to make
an order rereferring the case for testimony to be taken
and submitted to the Circuit Court of Appeals for its de-

cision; second, for the reason that the case is on appeal from the District Court of the United States, from the State of Washington, Northern Division, for a decision from appeal from the District Court judgment; third, on the ground that the Circuit Court of Appeals must base its opinion upon the evidence submitted in the lower court and only upon such evidence as was before the lower court for its decision.

Q. (Mr. METCALFE.) Mr. Kelly, give your full name. A. Michael Kelly.

Q. Where do you live? A. South Park.

Q. Where is South Park, King county?

A. King county, Washington, yes.

Q. Near the limits of the city of Seattle?

A. Yes, near the limits of the city of Seattle.

Q. How old are you, Mr. Kelly?

A. Forty-seven.

Q. How long have you been a resident of King county?

A. About thirty-six years.

Q. What is your business at present?

A. I am acting as deputy sheriff.

Q. What has been your business during the past thirty-six years in King county?

A. Oh, I have been farming and logging, and been more or less connected with the sheriff's office in King county for the last seven or eight years.

Q. At present you are a deputy?

A. At present I am a deputy.

Q. I will ask you if you know the appellee in this case, Charles H. Newman? A. I believe I do.

Q. Is there any question about whether you do or not—did you ever see him?

A. Yes, I saw Charles H. Newman, at least he acknowledged that was his name.

Q. When did you see Mr. Newman and under what circumstances—when did you first see him?

A. It was somewhere about the 22d or 23d of April, I believe; I was sent to West Seattle at that time by Mr. Gardner to look for a man by the name of Billie Gray and I was told that Mr. Newman could give me information necessary, that he had worked with Gray on board of the bark or vessel named the "Blakeley," that Mr. Newman had been hurt on the "Blakeley," and also requested that I should note the condition of Mr. Newman, whether or not he was able to get around and help himself, and what his condition was; but the main feature, as I understood it, was that I was to find Billy Gray. So I went to West Seattle and found Mr. Newman's Newman lived, not far from the Pavilion, the old Paviliou on top of the hill, which is about a half a mile from the waterfront. I went to the house—

Q. This was in King county?

A. King county. There was a lady came to the door, with a baby in her arms, and I asked if this was Newman's place, and she said, yes; I asked if Newman was in, and she said no; she said he was down on the waterfront at his shop; that she had taken him some lunch, and he was down there. She seemed a little amused; she said there had been three men there already within an hour or so looking for Mr. Newman. I asked if she knew a man by the name of Gray, and she said yes; she thought he had just got in on a schooner that was in Seattle.

Q. Did you ask her then as to where Newman was, and say anything to her about his condition?

A. Yes; I told her that I wanted to see Mr. Newman, and she said that she had left him at the shop. I asked her about his condition simply because I wanted a description of him, and I asked her what kind of a looking man he was, and if he was crippled so as to use a cane, and she said no, that he was getting better now, and did not have to use a cane, or words to that effect, and that I would find him in the shop close to the Blakeley Company's warehouse, I think.

Q. Did you ask her at that time how he walked?

A. Yes. I says, "How does he walk, does he use a cane or crutch, or anything of that kind?" That was for the purpose that I might know him, in case I should meet him on the way up, and she said, oh, no, he did not use a cane, he walked just like anybody else. And I went back down—

Mr. MARTIN.—I object to this as hearsay testimony, as it was not in the presence of the appellee and therefore not admissible.

Q. Did she tell you who she was?

Mr. MARTIN.—I object to the question, for the reason that the response must be hearsay, and it is not competent evidence.

Q. Did she tell you who she was?

Mr. MARTIN.—I renew my last objection.

A. Well, only in a manner; she said that she had taken him his dinner.

Q. Did she say there was any relation between them at all? A. Not that I remember.

Q. Whether she was his wife or not?

A. No, sir.

Q. Did you not ask her? A. No, sir.

Q. What did she say then as to the state of his health?

Mr. MARTIN.—I object to what she said, or anybody else said, as hearsay evidence.

A. She said she guessed he was as well as he ever would be.

Mr. MARTIN.—I move to strike the answer, for the reason stated in my objection.

Q. Now, then, continue, Mr. Kelly; what did you then do?

A. I went down to his warehouse, or to his shop, and the door stood open, but there was nobody in the shop. I went to the warehouse near by, and found a man in the office there and asked him if he knew Newman, and he said yes; he says, "He has been around here all morning. Ain't he in his shop?"

Mr. MARTIN.—I object as simply hearsay, and reciting nothing but hearsay evidence and not admissible, they being statements not made in the presence of the appellee and in no way connected with the appellee.

A. (Continuing.) He stepped to the office and sung out, calling Mr. Newman by name, and Newman answered, so I followed the sound and found him then painting or working on a little sloop, a plunger close to the fence outside of the shop. He was sitting on a box, painting, and I asked him if he was Newman, and he said that he was. I asked him if he knew a man by the name of Billy Gray, and he said he did, and I asked him where Gray was. He thought he had gone off on a

schooner; I think he called the name of the schooner "Valdes," or something like that name; and I asked him where I could find out more about him; and he named a party here in Seattle, I think a man that kept a fruit store, and also a man who keeps a grocery on the waterfront, and ship chandlery store, and he said he could tell me all about him, and if I—

Q. Was there any conversation between you and him as to whether he was hurt on the "Blakeley"?

A. Yes. I says, "You got hurt on the 'Blakeley,' did you?" And he said, yes, he had. I asked him how he was getting along, and he says, "I am about as well as I ever will be, I guess." And I says, "How did the company treat you?" And he says, "Oh, they have not done anything for me."

Q. Now, then, while you were there, what did Newman do; was there any action on his part, at all; did he sit still, or walk around, or what?

A. He painted a small space in front and then he moved along; he just hunched long with his box. He was sitting on a box like that, and painted in another space.

Q. Picked up the box and moved it from place to place?

A. Yes; like this (showing).

Q. Did you observe Mr. Newman, as to his appearance?

A. Yes, sir.

Q. As to his health?

A. Yes; he was a pretty healthy looking man; looked like he was all right.

Q. (Mr. MARTIN.) Are you a doctor?

A. No, sir.

Q. Have you ever had any experience in examining people to see whether they were healthy?

A. Yes; I have been with doctors a good deal; been around the poor farm with Dr. Whiting, and I have always done my own doctoring; I have raised a big family of eight children, and I have not called a doctor in twenty-eight years.

Q. Do you consider yourself a doctor?

A. No doctor.

Q. Do you consider yourself an expert?

A. I have got common sense, and I can tell whether you are sick or healthy—I think you are all right, and feeling pretty good.

Q. You consider yourself able to diagnose a case and determine whether a man is sick, or what is ailing him?

A. Oh, to a certain extent—not an expert.

Q. Did you ever attend a medical school?

A. No, sir.

Q. At all? A. No, sir.

Q. Ever study physiology to any extent?

A. No—I could tell whether a man's head was cut off, or whether he has got a broken leg.

Q. That is about all you can tell?

A. I do not pretend to be a doctor.

Mr. MARTIN.—I object to the witness testifying as to the man's health, for the reason that he is not competent to testify on that point.

Q. (Mr. METCALFE.) State, Mr. Kelly, from what you observed of Mr. Newman while he was working and during the conversation, his actions, and what his appearance was as to his health and strength.

Mr. MARTIN.--I renew my last objection.

A. He seemed like a good healthy man; his color and appearance was all right.

Q. When he would pick up his box and move from place to place along the sloop, or that vessel there that he was painting, did he complain of any pain?

A. No, he made no complaints.

Q. You say he told you at that time that he was the Newman that was hurt on the "Blakeley"?

A. Yes, sir.

Q. At the time that you observed Mr. Newman, and at the time that you were talking with him, did he complain of suffering from any pain? A. No.

Q. Did you subsequently to the 23d of April see Mr. Newman? A. Yes, sir.

Q. Did he have any appearance at that time to you of being a cripple? A. Well, no.

Mr. MARTIN.—I renew my last objection, and move to strike the answer for the same reason.

Q. When and where, and under what circumstances?

A. Since that I went over in company with Mr. Gardner and his typewriter, the young lady that works in his office. We went to his house and rapped at the door and the same lady with the baby came to the door that answered me when I first went there; and they asked if Mr. Newman was in, and she said yes; and asked if we could see him, and she said "walk in"; and we went in the room and this time he was on a lounge, and it was the same man that I had seen at the boat—that I am positive of.

Q. You identified Mr. Newman at his house as being the same man that was painting that sloop?

A. Yes, sir.

Cross-Examination.

Q. (Mr. MARTIN.) You say you went up to Newman's house the first time you went over?

A. Yes, sir.

Q. What for?

A. To find the address of Billy Gray.

Q. What did you want with Billy Gray?

A. I did not know what Mr. Gardner's motives was or what he wanted Billy Gray for.

Q. You did not know what you wanted Billy Gray for? A. No.

Q. What were you going to tell Billy Gray when you saw him—just take a look at him?

A. I was going to get him to come to Mr. Gardner—tell him that Mr. Gardner wanted to see him. Mr. Gardner did not tell me for what purpose he wanted him, but that was my instructions.

Q. You did not know what you wanted him for at all?

A. No, sir.

Q. But you went up there and knocked, and of course you did not know anything at all about Newman?

A. No, sir, I did not; I knew nothing about Newman.

Q. You went over there, and you were paid for going over there to procure evidence, and you were to furnish evidence about Newman? A. No, sir.

Q. That is what you went for? A. No, sir.

Q. You were to be paid money for going over there to get evidence?

A. I did not know that it was in that way at all.

Q. I ask you, were you not paid for going over there to get evidence?

A. I was paid to go over there to see Billy Gray; that was my understanding of the matter.

Q. Did you find Billy Gray? A. No.

Q. You furnished an affidavit to the appellants in this case, did you not? A. That came on afterward.

Q. You were paid for furnishing that affidavit, were you not?

A. I was working by the day for Gardner.

Q. Who is Gardner?

A. He is pretty well known here.

Q. Who is Mr. Gardner? A. A detective.

Q. You stated in your examination that you were deputy sheriff? A. I was not at that time.

Q. But you were trying to lead the Court to believe that you were and had held the position of deputy sheriff, did you not?

A. I have held it, and do hold it now.

Q. Were you acting as deputy sheriff at that time?

A. No, I was not.

Q. You were at that time acting as a detective under this man Gardner, were you not, and being paid?

A. I suppose that is what you call it.

Q. And were sent over there for the purpose of getting evidence; to be in a position at least so that you could make an affidavit against Newman?

A. I did not know it that way at all.

Q. You did not know it? A. No, sir.

Q. Then, why did you inquire about Newman's health?

A. Merely to find out whether—I did not want to pass him on the way, I did not want to run up that hill again.

Q. Why did you inquire about his health?

A. I do not know as I did; I just asked about his condition.

Q. You stated you did inquire about his health.

A. I asked about his condition.

Q. You asked Newman whether or not he was injured on the Blakeley? A. Yes, sir.

Q. Why did you ask her that, then, if your sole purpose was to try to find out where Mr. Gray was?

A. I wanted to find out if he was the man that Gray knew.

Q. Then, on the evidence that you had been to the house, you went and made an affidavit wherein you swore that Mrs. Newman told you that Mr. Newman was at work in his shop, did you not?

A. Why, she told me that she had taken his dinner to him; that is what she told me.

Q. You say that she told you that he was at work in his shop, do you?

A. At work, no; she said he was in his shop, and she had just come back after taking him his lunch, that is what she said.

Q. You swore that she told you that he was at work in his shop?

A. Well, it amounts to about the same thing, as I look at it; of course, she said that he was at his shop. If he had not been at work she would not have taken his dinner down there.

Q. You admit that she did not tell you that he was engaged at work in his shop?

A. I do not think that she said "work."

Q. You went to work and made an affidavit on the pre-

tense that you were over there—for the purpose of giving it some semblance of truth, that she told you that he was at work in his shop?

A. That would not be the intent of it. That was not my intent. You can put that construction on it if you want to.

Q. Did you swear to the following in that affidavit: "That on the 23rd of April, 1900, he called at the home, meaning the home of Charles H. Newman, libelant in the above entitled cause, and rapped at the door, which was answered by libelant's wife, who informed affiant that her husband was working in his shop close to the Blakeley Company warehouse?"

A. Yes, sir.

Q. You swore to that, did you not?

A. Yes, sir.

Q. And when you swore to that you knew that that was not so?

A. No, sir, I did not. The shop had all the appearance of a man being at work.

Q. You knew that she did not tell you that he was working in his shop, did you not?

A. No, sir; she told me just that exactly.

Q. A moment ago you said that she did not.

A. No, sir, I say that is it, just the same thing. He had all the appearance of working, and the shop had all the appearances of a working shop.

Q. You say you never saw him that time when you went to the house first?

A. I did not say anything of the kind.

Q. You stated you never had seen him before you went to the house at that time?

A. Before I went to the house, no, sir.

Q. You say that this was what was told you at the time there at the house? A. That is right.

Q. Now, you are trying to bolster it up by saying that he had the appearance of a working man when you never saw him at all, did you? A. Certainly I saw him.

Q. Not before that time.

Mr. METCALFE.—Take your time and answer the question.

Q. Then, you say you went down to the shop?

A. Yes, sir.

Q. And you saw what you say was Mr. Newman?

A. Yes, sir.

Q. And you say you saw him painting?

A. Yes, sir.

Q. What was he painting with?

A. With a brush.

Q. What kind of a brush?

A. It was just a common small paint brush.

Q. What kind of a looking brush?

A. Oh, well, it was not a very large brush; it was a small, round brush.

Q. What color was he painting?

A. Sort of a dark color.

Q. He was painting a dark color, was he?

A. Yes, sir.

Q. What part of the boat was he painting?

A. The bottom.

Q. Painting on the bottom of the boat?

A. Yes.

Q. And he was painting a dark color?

A. Yes, sir.

Q. Had a very small brush? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. How large a boat was it?

A. Well, I guess you would call it a sloop or a plunger; I don't know.

Q. This was a very small brush he was using?

A. Yes, sir.

Q. Now, is it probable that he would be using a small brush on the bottom of a large boat?

A. Oh, he could use one on the largest size, as far as that is concerned.

Q. As a matter of fact you never saw him painting there at all? A. How is that?

Q. I ask you this question: If, as a matter of fact, you ever saw him painting that boat at all?

A. You are a liar, sir; I did see him painting a boat there.

Q. What color was he painting that boat?

A. Sort of a dark color.

Q. Sort of a dark color? A. Yes, sir.

Q. What was the dark color?

A. Oh, well, I don't know anything about that; the boat is there to show for itself; the color is there.

Q. You did not observe the boat at all?

A. Oh, yes, certainly.

Q. Then, you cannot tell now?

A. I was not very particular.

Q. You cannot tell what the color of the boat was?

A. Mr. Newman was the man I was after, I wanted to find out about—

Q. He was the man you were after?

A. No, sir.

Q. You knew of no purpose for what you wanted Gray at all? A. No, I did not.

Q. Did you inquire as to Mr. Newman's health before you had seen him; did you inquire how he walked—inquired whether he used a cane, you inquired how he was getting along; you inquired whether he was the man injured on the "Blakeley," and you inquired from her what the company had done toward helping him?

A. I inquired from him.

Q. And yet you say you did not care to see Mr. Newman at all, it was Gray that you were after? Now, Mr. Kelly, what were you paid for it? A. Just wages.

Q. I ask you—you say you were paid for it, for getting that affidavit?

Mr. METCALFE.—Just state what your wages are.

A. Three dollars a day.

Q. I asked you what you were paid for getting that affidavit?

A. Three dollars a day—I was working by the day, sir.

Q. I will ask you if you did not get more than three dollars for procuring that affidavit?

A. No, sir; I was working by the day, at three dollars a day.

Q. For Gardner?

A. For Gardner.

Q. That is the same Gardner, is it not, that served a term in the penitentiary?

A. I suppose so; I think he did, yes.

Q. You think that he did—you know he served a term in the penitentiary several years?

A. No, I do not know it really.

Q. You do know that he is the same man?

A. Yes, he was the same man that was implicated in a smuggling deal.

Q. The same man that served a term in the penitentiary?

A. I do not know as to that really.

Q. That is the man that you are working for?

A. He will bear me out regarding Gray; he sent me over there; of course, casually, to observe how Newman was, but I came back here and still kept up the search for Gray; did not know anything about this man Newman at all.

Q. You say that you still kept up the search for Gray?

A. Yes, sir.

Q. What did you do?

A. I went to the fruit dealer down here and asked, him, and "Yes, sir," he said, "he knew Newman," and had seen Newman after paint and oil the day before.

Q. You were looking for Gray?

A. Gray. I asked him if he knew Newman and Billy Gray.

Q. The fact is that you knew you were not sent there for the purpose of hunting Billy Gray, but used it as a cloak to make the pretense that you had discovered something?

A. It may be; but really I did not know it at the time, I will tell you that much.

Q. You know that is the truth, do you not?

A. Yes, sir, I think so now. But when I came back I went down here to the ship to see if I could find Gray and I was still looking for Gray and made my report that I could not find Gray.

Q. Was he painting the boat red?

A. No, it was dark.

Q. Was he painting the boat green?

A. No, it was a dark color.

Q. You are positive it was not green?

A. No, it was dark.

Q. You are positive that the boat was not painted of a greenish color?

A. Yes, sir, it was not that day.

Q. You are as positive of that as anything else, and you also are equally as positive that he was using a small brush there?

A. Oh, well, it was not like that pencil; it was not a large brush. It was not a flat brush, it was a round brush but not a very large brush.

Q. I will ask you, Mr. Kelly, what you received as compensation for what you have done in procuring this affidavit?

A. I told you that I have told you straight, Mr. Martin.

Q. How many days did you put in?

A. Just one day.

Q. You say you went over to Newman's house again, did you?

A. Yes, sir. I wanted to find out whether I saw Newman at the boat and whether he was the man or not. I went up there and I am positive that he was the same man that I saw at the boat.

Q. You say Gardner went with you?

A. The last time, yes.

Q. And you say his stenographer went with you?

A. Yes, sir.

Q. What was your purpose in going over there, then?

A. Well, I went to identify Newman, that was about all.

Q. You went into the house, did you?

A. Yes, sir.

Q. And Mr. Gardner? A. Yes, sir.

Q. And his stenographer? A. Yes, sir.

Q. Well, what took place there?

A. Well, Mr. Gardner opened the conversation by saying to Mr. Newman—I don't know, he just told Newman that there was some reports out and seemed to be this and that there was a misunderstanding about the proposition and he wanted to right it, and Mr. Newman he was lying on his lounge and he said that he would make no statements unless his attorney was around and to "go and get my attorney and then anything you want to know I will tell you in his presence." And so of course, that was about all that occurred.

Q. Now, do you know the man that has charge of the grading of the electric line that they are building in there to West Seattle, Mr. Murphy? A. No, sir.

Q. You don't know him at all? A. No, sir.

Q. Have you done anything more in connection with this case than you have stated?

A. That is all.

Q. You went around there and inquired of everybody, did you? A. No, sir.

Q. Did not you speak with any other people concerning Mr. Newman?

A. Only to find out where his house was.

Redirect Examination.

Q. (Mr. METCALFE.)—Did you know when you went to West Seattle, at Mr. Gardner's instance, whether or not the evidence that you were to obtain at that time was for Mr. Newman's benefit or for the benefit of the opposite parties?

A. No, sir, I really did not know anything about Mr. Newman and my object was not in regard to Mr. Newman at all.

Q. You did not know whether, as a matter of fact, you would go to see him for the benefit of the "Homer" or for Newman, did you?

A. No, sir, if I had I would have gone at it entirely different.

(Testimony of witness closed.)

SAMUEL F. COOMBS, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Where do you live, Judge?

A. At West Seattle.

Q. How old a man are you?

A. I am sixty-nine.

Q. How long have you lived in King County?

A. Over forty years.

Q. Have you ever held any official position?

A. I have been committing magistrate and police judge and also county auditor.

Q. Do you hold any official position now?

A. Justice of the Peace in West Seattle.

Q. How long have you been a justice of the peace in West Seattle?

A. Since last year. Two years ago I was elected.

Q. Do you know the appellee Charles H. Newman in the case of Newman against the steamship "Homer"?

A. Yes, sir.

Q. How long have you known Mr. Newman?

A. Well, a couple of years, or so.

Q. Where does he live?

A. He lives up on the hill in West Seattle.

Q. How far was that from the landing?

A. Oh, somewheres—pretty near half a mile, I guess.

Q. What sort of a hill do you have to go to get to his house?

A. About 13 or 14—about a grade of 13 or 14, I don't know what they mean by that. I suppose 13 or 14 inches to 10 feet—I know an electric is 8 to 6 or 13, that is all I know about it.

Q. This hill itself to Newman's house is about half a mile long?

A. Very near that, I should judge.

Q. Well, is it a hill there to climb which makes you puff and blow?

A. Well, it is a continual grade, about that grade to the top.

Q. Does it wind you a bit to go up it?

A. Of course when I was hurt in the gas company I had to be hauled up quite a while.

Q. You are aware of the fact that Mr. Newman claims to have been injured on the brigantine "Blakeley" on account of a collision between the "Homer" and the "Blakeley"?

A. I heard so.

Q. Do you recollect, judge, about the time, and were you living in West Seattle at the time that Mr. Newman claims to have been injured?

A. Yes, sir, somewheres in April I think it was.

Q. April, 1899?

A. I think so. It was soon after he came back from the Yukon; in fact he brought in a letter for me from my son, so I knew of him.

Q. When was the first time, judge, that you saw, if at all, Mr. Newman out of his house after he was injured, or claimed to have been injured?

A. It was some time last fall that I saw Mr. Newman first.

Q. Where was he at that time?

A. About half way down the hill. I met him. He was walking down and I had a talk with him. I says, "Getting out, ain't you, I am glad to see you out." He says, "I have just been out in the yard." I think that was about six months after he was injured that I saw him half way down the hill looking over the bank.

Q. Was anybody with him, at that time, judge?

A. I do not remember whether his wife was with him at that time or not. I hardly think that she was. I talked with him there and was pleased to see him and the conversation that we started was a very friendly conversation, and I told him that I had heard that the "Blakeley" was paid right off quick when she got injured and "why did not you get after them"? Well, he did not give me any answer and I asked him that and then said they had paid damages to the "Blakeley" and I thought they ought to pay damages to you, and that is

about all that I said to him. But I was disappointed to see him looking so fresh in the face, he was looking as healthy as ever I saw him, but I think he was wearing a cane, the first time.

Q. When, Judge, did you see him after that?

A. It must have been a month or two.

Q. Where was it that you saw him then?

A. He was walking up—down, I met him at that time and had a talk with him.

Q. This was about a month after?

A. This was about half way up the hill.

Q. About a month afterward?

A. About a month afterward, some time late last fall that I saw him then.

Q. How did he appear then as to—

A. Well, I do not remember, I hardly think that he had a cane at that time; he might have had it but I do not think so. He was walking moderately, not so fast as I walk generally, but a good deal faster than I did walk after I got hurt.

Q. Did you see Mr. Newman at any time subsequent to that?

A. A very short time after that I saw him going up or down.

Q. Was there anyone with him?

A. Now, I am not certain, I only saw him once after that. I have not seen him since; that was about a month apart.

Q. Did you ever see him going up and down this hill that you speak of without any cane or crutch?

A. Well, I think one time that he did not see me that

I saw him, he was going either ahead of me or behind me, I am not certain which.

Q. How did he appear to walk at that time, Judge, naturally?

A. He did not walk rapidly or anything of that kind.

Q. Was the gait a natural one?

A. Well, I was not thinking about it just about that time just how it was.

Q. Well, Judge, you seem reluctant to testify; why is that?

A. Why, they are neighbors of mine over there.

Mr. MARTIN.—I object to that. It is only an attempt between the counsel and the witness to try to give some weight to his testimony.

Q. Go ahead and testify, Judge.

A. Well, I will say that I was brought into this very peculiarly; I was drawn into it through this same man Gardner.

Q. Well, what about it. I see you seem reluctant to testify, why is that?

A. Well, because they are neighbors of mine, and I was under a misapprehension when I started in. I was called in to Mr. Gardner's office and I did not know what for and he says—Mr. Gardner settled a case for me when I got damages for falling into a hole that the Gas Company had left open with steam coming out from the hole, and I fell in and like to broke my back. I thought I was injured for life, but, as it happened, I—and I commenced suit for \$5000 through Fred Rice Rowell.

Mr. MARTIN.—I object to this testimony and move to strike it out.

Q. Go on and testify.

A. And he settled it for me. I settled for \$300 without going to a lawsuit about it. He called me in for that purpose and he says—and I had every reason to believe that he was friendly to Mr. Newman, and when he asked me to see if I could not fix some plan to get a compromise I says, “Has he got a judgment against him?” And he says, ‘I don’t know.’ And I could not find out whether he wanted me—

Q. Did you know when you saw Newman whether he had a judgment or not?

A. I did not know it and never heard of it. In fact I asked his wife afterwards—or I would not have went there if I had known that he had a judgment.

Q. Now, Judge Coombs, I call your attention to an affidavit made by Charles H. Newman, used as an answering affidavit before the Circuit Court of Appeals at San Francisco on the 9th day of May. I will read to you that portion of Mr. Newman’s affidavit which refers to this—This is a copy that I hold in my hand and is the copy handed to me by proctor for the libellant.

Mr. MARTIN.—I object to cumbering the record with such stuff, for the reason that it is not the affidavit of the witness on the stand and is incompetent to impeach the affidavit.

Q. The following words, beginning on page 2, as a part of the affidavit as sworn to by Mr. Newman on the 5th day of May, 1900. “Affiant further states that the statements contained in the affidavit of said Samuel F. Coombs that affiant walked up the hill at West Seattle from the ferry landing without the aid or assistance of anyone, or the aid or assistance of crutches or even a

cane, and moved along and climbed the hill with as much ease apparently as the said Samuel F. Coombs, who states he is a strong and healthy man, is false and untrue.

“Affiant further states that the said Samuel F. Coombs has called upon affiant and has stated to affiant that he was sent to affiant as his friend from General Metcalfe, attorney for the company, and would advise affiant to settle his claim against the company, that the company would meet him half way and that he could settle up his claim and judgment against the steamship Homer, and to do so without the knowledge of affiant’s attorneys. Affiant informed said Samuel F. Coombs that he was not familiar with such matters or the conduct of cases, and would have nothing to do with the case but relied solely upon his attorneys in all such matters, and that he would not do anything in the matter without having sent for his attorney and consulted with him, to which the said Samuel F. Coombs stated that he was foolish, and to let his attorneys go to ——, and that they would rob him of whatever amount he got from the company, and that he would be better off to accept half of the amount and give a release and satisfaction to the company; that unless he would accept that amount and settle with the company and meet the company half way that the company—meaning the Steamship Homer and the appellants in the above entitled cause—would fight appellee’s claim for ten years, and would in all probability be able to keep affiant from recovering anything from the injuries which he sustained.

“The said Samuel F. Coombs also urged upon affiant

the need of other medical assistance and the money with which to enable him to recover from the injuries which he had sustained, and that he would never be able to recover from his injuries unless he obtained better treatment, which could be done providing he settled with the company, who would pay him the money over at once. That the said Samuel F. Coombs has gone to several parties who are friends of affiant and urged them to go and see affiant and try to persuade affiant to make a settlement with said company through said Samuel F. Coombs, going in the role of a friend of affiant, and being the same person making the affidavit on behalf of appellants in the above entitled action."

Judge, is the whole of that or any part of it true? Did you see Newman at any time and have that conversation?

A. I gave my affidavit that I have not seen him for the last five or six months, I have not seen him—

Q. Did such a conversation as that related in the affidavit of Mr. Newman occur between you and him?

A. Not the least bit.

Q. Now then, here is an affidavit of Mary Newman, the wife of appellee Charles H. Newman, and in it the following occurs: "Affiant further states that she has also read the affidavit of Samuel F. Coombs in the above entitled cause; that she is acquainted with said Samuel F. Coombs and that he has called at affiant's house and stated that he was authorized by the company owning the steamship Homer to settle appellee's claim for damages against said steamship Homer; that as he was a friend of affiant's and her husband he was desirous of seeing them get something out of the case, and that the

company had informed him that they would meet appellee half way, and that the money would come in quite handy to appellee; that appellee had better settle said claim for half the amount awarded, and that unless he would settle said claim that the company had informed him that they would fight said claim for ten years. That said Samuel F. Coombs was then informed that appellee's attorneys had charge of said case, and that they could not settle the same without consulting his attorneys. Whereupon said Samuel F. Coombs stated that appellee could settle said cause without his attorneys, and that he would settle the matter up for them, and to let his attorneys go to ——, and to settle said cause himself and release said company. Whereupon he was informed by affiant that such course would not be an honest course to take or the right way to act, and as they were not familiar with matters of law they would have nothing to do with him towards having a settlement of said claim, but that he could call on their attorneys, if he saw fit, and make any proposition he desired to them." Now, did you see Mrs. Newman at any time within the past six weeks?

A. The only time I saw her and had a conversation with her was the time I was sent over and did not know that they had any judgment against them. I was asked if I was friendly to them and I told them yes, told Gardner and told Gardner that I would inquire. I asked them, I says, "Have you got a judgment—Have they got a judgment against the company"? I did not know who the company was. He says, "I don't know." And I did not know then when I left Gardner's office whether he

was called in for Newman or for the company. I had called there and she was at the front door, I don't think that I knocked. I asked if Newman was home—I was very friendly with the family, and I asked if Newman was in, and I am not certain whether she said he was in town, but he was not in. I think she said that he was not in, and I think that she snapped me up very quick. She snapped me up very quick. Then I said, "Well, I just called up here to tell you that I got hurt once and I settled it, I was getting a little better and I settled it rather than to continue and I took \$300 and settled it. And the same man that asked me to go over to see you. And I says, "Have you got a judgment"? And she says "I don't know anything at all about it", and she turned around, and that is all the conversation that I had with her, that I had settled and got a little out of it. Then, at that time I felt very friendly to them and do at the present time.

Q. Is the conversation as detailed in that affidavit just read to you by Mary Newman, true or not?

A. I did not know who the attorneys was for the other side.

Q. But is that part of it that she relates there, or is the conversation that you have just related true?

A. It is true.

Q. That is what, do I understand you to mean?

A. I mean this: that I just advised her the same as I would my own people.

Q. Was this part of her affidavit true or was this conversation that you have related true?

A. Yes, sir, this is true, every word that I have related. That long conversation I did not have with her

because I was not there—I only had four or five words with her.

Mr. MARTIN.—I move to strike all of this out.

Q. Now then, Judge, have you seen Newman since?

A. I have not seen him since my first statement.

Q. Now, I will call your attention to an affidavit made by one C. N. Cooper, sworn to on the 5th day of May, the original of which affidavit is on file in the records and files of the Circuit Court of Appeals: "This affiant further states that he has heard read the affidavit of Samuel F. Coombs; that in many respects said affidavit is untrue; affiant further states that said Coombs called upon him and requested and endeavored to have him assist said Coombs to procure a settlement with this libellant Charles H. Newman for the company, and stated that he could settle the case for the company with said Newman whereupon he was informed by affiant that affiant understood Newman's case was in the hands of his attorneys, etc." State whether you know C. N. Cooper?

A. I know him.

Q. Did such a conversation occur between you and Cooper?

A. Not one word with him personally, not one word.

Cross-Examination.

Q. (Mr. MARTIN.) You know Mr. Westerman, don't you?

A. Yes, sir.

Q. You had a similar conversation with him, didn't you, that you had with Cooper, about trying to settle the case?

A. I asked him what he thought about it; he was a great friend—he and I were great friends with Newman.

Q. You asked him to talk to him in a similar way about settling the case that you had with Cooper? And asked him if he could not see if he could not do something toward settling it?

A. Not in that way.

Q. Did not he tell you he had enough to do to attend to his own business and he thought you would have enough to do to attend to yours?

A. No, he did not say that to me, he and I were very friendly. At that time I had found out that there was a judgment, that Newman had got a judgment and then I told him that I felt awfully bad about that, that I had run into this anyway—I felt bad that I had given my affidavit because—but after I heard the captain of the steamboat say that he had seen him pass there—I had not seen him—

Q. You say that these portions that Brother Metcalfe read to you of Mr. Newman's affidavit is untrue?

A. I did not see Mr. Newman at all.

Q. You say you had not seen him for four or five months?

A. I had not seen him since the last time I saw him going up or down the hill there, the first time he just came out.

Q. You have not seen him for the last five or six months?

A. No, sir, I have not seen him for the last three months.

Q. Don't you know that you have seen him since the last five months or six months and had these conversations with him?

A. No, I never had—I had the first conversation, as I tell you in my opening affidavit, that is what I was talking to him about.

Q. Since you had the conversation with him?

A. I have not seen him and have not had any talk with him.

Q. You mean to swear you have not seen him for the last five or six months?

A. I have not seen him since some time last fall.

Q. Have not seen him since?

A. No, sir.

Q. What time was it last fall, in November or October?

A. The first time that he was out I had a talk about him about my boy. I felt awfully pleased to see him walking up and down there.

Q. What month was that?

A. September or October, somewheres last fall. And then two or three months afterwards—one or two months.

Q. One or two months after that?

A. One or two months.

Q. You never have seen him since?

A. I never have seen him since.

Q. You are positive of that?

A. I am positive of that.

Q. You are positive that you did not have that conversation with him?

A. I did not have that conversation because I did not see him.

Q. Within the last five or six months?

A. No, sir, I did not see him.

Q. Now, you knew Mr. Newman was in a critical condition, did you not?

A. I did think so when he first got hurt, and I am not certain now because I have not seen him enough. I was hasty in making the affidavit, I will admit that.

Q. You know that Newman will never be able to perform any manual labor whatsoever?

A. I do not know, you know I have not seen him enough, but I was happily disappointed when I saw him the first time going out and he said he had been out in the yard two or three times and I met him about half way down the hill looking around, and I says, "You are looking first rate." And he says, "I am getting along, yes." And I made that remark, I says, "You ought to make them pay you something as well as for the old hulk that they knocked to pieces."

Q. Now, you have been going around trying to see what you could get this case for, by trying to get a settlement, have you not, Mr. Coombs?

A. Not after that, not after she rebuked me, I have not done that. I then wanted to find out—

Q. I know, but that was your third attempt when she rebuked you?

A. That was—

Q. After you had been running around to see if you could not get charge of the case to settle it up?

A. No, there was not the least bit of that in it at all.

Q. Told them that you were acting for this company and trying to get it settled up?

A. The company never said anything to me about it at all. Mr. Metcalfe, after I had found out that there

was a judgment—I did not know how much it was—Mr. Metcalfe, he says, “The company is fair.” And I says, “By George, you ought to give him something. I believe the company ought to pay that man something because I have my case right in point, if I had fought them I never would have got a cent after I got well.” And he says, “We are reasonable,” Mr. Metcalfe told me, and he says—and he went on to tell about what it cost, some \$600 or \$700 to have this printed matter fixed up to get the appeal. He says, “We are fair, and the company would pay a reasonable sum.” That is what Metcalfe told me after I found that—

Q. You went around when you found that you could not do anything or make anything out of it in the way of procuring a settlement, you turned around and tried to do as much harm as you could?

A. No, sir. I have not been trying to do anything.

Q. You tried to make an affidavit to do as much hurt as you could for the company? A. No, sir.

Q. You mean to say that you did not make this affidavit voluntarily?

A. No. Well, I made that affidavit not really voluntarily but after I read the other affidavit of Captain Waite—

Q. Then, you based your affidavit on what you saw in Captain Waite’s affidavit?

A. No, I did not do that. I thought for myself, “Well, by George, they are persecuting that man wrongfully there or somebody else, or else he has been doing—at least he has not been doing the right thing if he has been seen out on the street.”

Q. You know, Mr. Coombs, that Mr. Newman lay there on his face in bed for months and months after he was injured and had to be turned and was in a perfectly helpless condition, was he not?

A. I do not know it, but I heard so. I heard that he was badly hurt and he and I used to be great friends; I was going up and down by his place there and I talked the matter over with Westerman.

Q. You know that man has been in a crippled condition and is in a crippled condition for life?

A. I have not seen him lately, you know, the last time I saw him was last fall three different times. The first time was when he first came out.

Q. You mean to swear that you saw him without a cane?

A. One time without a cane; I think that was the last time that I saw him. That is one of the three times that I have seen him.

Q. You say when you saw him that he was standing looking over the railing?

A. That was the first time that he came out, he was walking down, about half way down, the hill from his house to the ferry, and I asked him if he was going down, and he thought not, that he would look across—he was standing looking over where the slide came down, half way down, and I talked to him quite a little while; I had to catch the ferry and I went on. I think I met him once in town, I think I did. I did not testify to that but I do remember that I met him coming down to the ferry once.

Q. When was that?

A. Some time last winter, I do not know when it was, but it was a good many months ago, two or three months ago.

Q. What?

A. I say it must have been two or three months ago.

Q. I thought that you swore that you had not seen him since five or six months ago?

A. I said six months after he was hurt before the first time I saw him; then the last time that I saw him—

Q. But to Mr. Metcalfe you answered as to whether these statements of Newman's were true, you said that you gave your affidavit that you had not seen Newman for the last five or six months?

A. I have not seen him since last winter; how long it is I do not know. I have not seen him since last fall, but I do remember now—

Q. You are positive you have not seen him since last fall?

A. I do remember seeing him pass over in town and speaking to him, but I am not certain; that is my impression. I did not think about it. But, of course, I do not remember exactly, it was September or October or November—it must have been five months ago. I have not seen him for four or five months anyway at all. I happened to see him on the road up town.

Q. You mean to say you never happened to meet him on the road up town?

A. I did not see him anywheres—I generally came to his house—but I would see him on the ferry or on the road. I have only seen him three times in the whole year.

Q. And these three times were last fall?

A. Some time last fall here; in the fall.

Redirect Examination.

Q. (Mr. METCALFE.) You said a moment ago that you did see him in town; what town do you mean?

A. Here in the city.

Q. In the city of Seattle?

A. I think I saw him somewheres on the dock coming off or on, I do not know which.

Q. You mean on this side of the bay, in the city of Seattle? A. I think so; but some time last fall.

Q. Mr. Martin asked you if you did not know that he was lying flat on his back and crippled for life. You never did know anything of that kind?

A. I never had visited at the house, and only from the information of my neighbors, they told me so; they all told me so.

Q. Now, a while ago you said that you felt bad that you had given an affidavit; what do you mean by that?

A. Well, in making it so strong as I did. I felt bad that I had—I thought to myself that they may have been wrong about it.

Q. Now, was it any of Newman's friends that came to speak to you about this affidavit?

A. No. I told Mr. Jenkins that I was thrown off my—that I was misguided in regard to this matter and this man Gardner rather fooled me and got me into going over to the house, because I did not know that there had been a judgment taken, and so I felt ashamed that I would go there when they had already gotten a judgment.

Q. Now then, the fact that you felt bad about your affidavit, and having made it so strong, I want to ask you this question: Whether or not the testimony you have given here is true as you recollect and understand it?

A. As I recollect and understand it, yes.

Q. (Mr. MARTIN.) You swore to the affidavit on the 27th day of April? A. I do not remember the date.

Q. In the month of April, 1900?

A. I guess that is the month.

Q. Before Mr. Jurey? A. Yes, sir.

Q. You signed that affidavit? A. Yes, sir.

Q. You read it over? A. He read it to me.

Q. In that affidavit you swear that you had seen the said Newman several times during the last four months walking up the hill at West Seattle from the ferry landing without assistance from anyone, or without the assistance of crutches, or even a cane; that he moves along very well and climbs the said hill with as much ease as affiant could do, who is strong and healthy, and I ask you if that is true or false?

A. Well, at the time I saw him he moved—

Q. When you made that affidavit you had not seen him during the last four or five months?

A. Four or five months; it was four or five months.

Q. And you stated in that affidavit on the 27th of April you had seen him going up and down the hill several times, is not that true?

A. I do not know what you call several times—twice would be several times.

Q. Within the last four months.

A. Well, if it is four months it is wrong, because that

was six months—pretty near six months; the last time would be four months—just about four months—that I saw him.

Q. This affidavit was made on the 27th of April?

A. Yes, sir.

Q. And was made for the purpose of trying to lead the Circuit Court of Appeals to believe that the man had recovered, and was running up and down the hills there during the last four or five months?

A. Apparently he walked straight; he did not stoop.

Q. You knew at the time this was not true, that you never have seen him going up and down in the last four or five months several times, did you not?

A. Well, the last five months, not the last four months, several times—no, sir; that is a mistake if that is there.

Q. (Mr. METCALFE.) What you mean to say is that the testimony you gave in your affidavit is substantially correct; there may be some portions of it that are inaccurate? A. Well, I think there is some.

Q. As to the main portions, it is correct?

A. As to the time I first saw him when he first came out, that is right I know; but the last time I am not certain; I think he had no cane the last time; I am not certain about that.

(Testimony of witness closed.)

M. B. HARBEN, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Where do you reside?

A. Seattle.

Q. How long have you lived in Seattle?

A. Ten years, and a little over.

Q. What is your business, Mr. Harben?

A. Detective.

Q. Do you know the appellee, Charles H. Newman?

A. I have seen him a few times.

Q. Were you ever at his house?

A. Yes, sir.

Q. At what time?

A. I think it was on the 24th of April.

Q. Tell what occurred there, if you please?

A. Well, when I first went to the house I went to inquire for Mr. Newman, and I was informed by the lady that he was then in Seattle.

Mr. MARTIN.—I object to the witness' statement as to what he was informed by the lady or anybody else as hearsay, and inadmissible and simply cumbering the record, and I move to strike it out for that reason.

A. And on the following day, the 25th, I called again, and he was at home. I had a conversation with him—but before I get to that, General, the point that occurred to me I have never mentioned to you before, and that is on the 24th when I went over, that was the day following the day Kelly was there. Kelly was there, I believe he testified, on the 23d, and on the 24th was when I met Ed Hansen down at this boat.

Q. Who is Ed Hansen?

A. He is a gentleman who lives at Alki Point, a light-house tender over there.

Q. What are his relations with Newman?

A. Well, he claims to be—

Mr. MARTIN.—I object to what relation he claims to be as cumbering the record, and I move to strike it out for that reason.

Q. A neighbor of Mr. Newman's?

A. Not a close neighbor, but he was acquainted with him.

Q. These were transactions taking place in the presence of Mr. Newman?

A. Oh, we were standing there at this boat talking.

Q. What boat?

A. The boat that is owned by Mr. Newman, both of these boats at that date had been partially painted, and I got some of the paint on my own coat, and I know positively that it was fresh paint; and the bulk of this boat was freshly painted.

Q. You mean the boat that Kelly testified about?

A. Yes, the keel was painted with what they call copper paint, a dark, reddish color; and there was some light paint being put on a small boat alongside the sailboat; a stripe that was being done, I suppose it was white paint; although the color being put over the dark was about the color of the card-board up there. It was light; I got some of that paint on my coat, and I know that it was fresh.

Mr. MARTIN.—I move to strike the answer as entirely hearsay.

A. (Continuing.) Now, on the 25th when I met Mr. Newman I had a conversation with him and talked about this boat, and asked him if he wanted to make a sale; I told him I thought I might possibly make a sale of it for him, and asked him, when he said he was willing to

make the sale, to give me a commission, and I wanted him to walk down to the boat to show it to me. At that he declined to do it, and discussed the boat and the machinery.

Q. Where was he standing at that time?

A. He was standing in his door; the second time when I asked him to go down he refused, making this remark. He says, "It is not good for me to run around too much just now." Mr. Newman is a man that is very strong and healthy looking, and he stood erect in his door and presented a very strong, healthy appearance.

Q. Did he have any cane or crutch to support himself with?

A. Not at that time; no, sir.

Q. He came to the door when you met Mr. Newman at the house?

A. Why, I think that the lady came first and then called him. But I am not sure about that.

Q. Did you come on the porch?

A. I stood on the porch talking to him for possibly fifteen minutes—ten or fifteen minutes.

Q. Did he walk from inside of the house?

A. I do not think that he shifted either foot an inch while he was there; he stood without moving at all in that erect position the entire time.

Q. How long were you talking with him?

A. Possibly ten or fifteen minutes.

Q. Did he walk from inside of the house out on the porch?

A. Yes, he walked through the hallway.

Q. Did he have any assistance of any kind with him?

A. None whatever. I could see him making through the hall; there was nothing but glass something like this

in the door, and I could see him plainly coming through the hall.

Q. When did you subsequently see Mr. Newman?

A. The last time that I saw him was a week ago—Monday, May 14th.

Q. That was since you made this affidavit?

A. Yes, sir. I had gone out on Alki Point to see a couple of gentlemen—Mr. Cooper and Stevenson and some parties—and on my way back I met Mr. Newman on the beach.

Q. How far from his house?

A. Well, his house is, say, a half a mile from the dock—the way that you come down it would be a half a mile, and where I saw him he was probably three-quarters of a mile further around the point, around on the beach; and I watched him until he approached the bath-house. At that time I met him; the first time that I saw him was some two or three hundred yards ahead. He had a cane that day.

Q. What date was this? A. I think May 14th.

Q. Did you see him on the beach?

A. Yes, he was walking along there and had this cane; just carrying it in his hand, and after he observed—

Q. Was he using it for a support?

A. When I saw him first he did not use it for a support, and only put it on the walk occasionally. And after he saw me he did not put the weight of his body on it at any time, even after he passed me. I turned and watched him walk a hundred yards further up by the bath-houses.

Q. The point at which you met him was a mile and a quarter from Mr. Newman's house?

A. Yes, fully that far. It would probably be less than a half a mile in a direct line, but you could not go on a direct line very well; I would not want to go that way.

Q. How would he have had to come to the point where you saw him?

A. There are two ways that he could have got there; one was to come down that hill, at least up from the top, and then go around the beach; and another way would be to go over the hill down there, as if you were going to Alki Point until the road struck the beach, and come down the other way; but he was coming from this way out, so that he must have come down the regular road down to the dock, and then around the beach.

Q. How about this hill that you speak of, was that any easier than the one that Mr. Coombs testified about?

A. I think it is a little worse.

Q. How is this hill, what sort of a hill is this?

A. It is a very steep grade.

Q. Is it easy or tiresome to walk up?

A. Well, it is not easy. It is probably like Cherry street for two or three blocks from Second avenue, going up the hill; just about such a hill, quite steep.

Q. Tiresome for an ordinary man?

A. Yes, for anyone walking at regular speed it would cut his wind down.

Q. Do you know Ed Hanson? A. Yes, sir.

Q. Is he a friend of Newman's?

A. He says he is.

Mr. MARTIN.—I object as hearsay.

Q. He lives over that at West Seattle?

A. No, he lives at Alki Point. A mile and a half or two miles beyond West Seattle.

Q. Did he ever talk with you about Newman?

A. Yes, that day that we were talking at the dock about the schooner, one day last week.

Q. Did you have a conversation as to Newman's condition?

A. What he voluntarily told me; I asked him no questions. He stated to me—he went with me from this boat up to Newman's house and introduced me to Newman. He had no idea what my business was, and after we got up there and found Newman was in Seattle we walked back.

Mr. MARTIN.—I move to strike the answer as hearsay and incompetent.

Q. Go ahead.

A. He went on to explain to me that Newman had got hurt in a collision between a steamboat and the brigantine "Blakeley," and that for quite a while Newman was confined to his bed and had to have a good deal of assistance, but for the last three or four months had been all right—the same as anyone else. That he had a judgment against the company, and that he was all right now, that he was probably entitled to all that he would ever get because of the suffering that he went through at first.

Cross-Examination.

Q. (Mr. MARTIN.) What were you doing over on the beach on this 14th day of May?

A. I was coming down from beyond Alki Point to the boat landing.

Q. What were you doing at Alki Point?

A. I went there to interview some parties.

Q. You went there to interview some parties?

A. Yes, sir.

Q. Alki Point is where?

A. Beyond West Seattle about two miles; I was probably two miles beyond that.

Q. As you came back you found him to the west of the West Seattle Landing? A. Yes, sir.

Q. About how far to the west of the West Seattle landing?

A. Not less than a half a mile, possibly three-quarters.

Q. On the beach?

A. Yes, walking along the beach.

Q. Out where the boat-houses are?

A. Bath-houses.

Q. You saw him there? A. Yes, sir.

Q. You are sure that was on the 14th day of May?

A. Yes, sir; I am pretty sure it was the 14th.

Q. And you made a note of it at the time?

A. Well, I think I did, but I cannot find it in my notes; I was looking over to see.

Q. What time of day was it you saw him?

A. About half-past two in the afternoon.

Q. You are sure about that? A. Yes, sir.

Q. Sure that was the hour?

A. I left the hotel at West Seattle at half-past eleven and walked quite rapidly until I got out to where these parties were at work on the road, and I got back just in time to take the boat that leaves there at 3:05 to come over here.

Q. You had been over trying to work up testimony in this case?

A. I was over there trying to find out the facts in the case.

Q. Trying to work up testimony?

A. Well, I was over there on this day to find out one particular fact, whether it would be for the company or against the company, I had no means of knowing. And between you and I, I did not care. I wanted to find out a certain fact.

Q. You had been over there trying to work up testimony, trying to get a man by the name of Murphy—to see if you could not get him to come in here and perjure himself by testifying that Newman had been working on the grade?

A. I did not try to get him to come here and perjure himself. I wanted him to state positively whether the man named Newman working for him was this man Newman.

Q. You knew it was not?

A. I thought it was.

Q. You knew it was not?

A. I did not know anything of the kind.

Q. You wanted him to testify that he was, did you not?

A. I did not; I did not ask him to.

Q. You were trying to get him to do it?

A. I did not.

Q. And you tried to get the woman at the boarding-house to testify that he had been boarding there?

A. I wanted to know whether he had or not.

Q. You wanted to get her to do so?

A. I did not.

Q. And did they not tell you that they would have nothing to do with it? A. They did not.

Q. They did not. A. No, sir.

Q. Had no such conversation with either of them?

A. I had a conversation with the lady at that boarding-house; I asked her; of course she stated that she knew this C. H. Newman; and I asked her if he ever boarded at her house, and she said not; and I know she told the truth.

Q. But, notwithstanding that, did not you ask her if she would come and testify that he had been?

A. I did not ask her to testify to anything; I never asked the question. At the time this man Newman was working for Murphy, Murphy's men did not board with this woman at all.

Q. What man Newman?

A. This man, H. Newman, that Murphy's book showed worked for him between the 12th of March and the 19th, and Murphy gives a description that tallies exactly with this C. H. Newman, and Murphy afterward went to see Newman to see whether he was the same man or not, and he says he looks exactly like him; he has the same red complexion.

Q. And he told you he would have nothing to do with it, and you were attempting to get a lot of perjured testimony to that effect?

A. The words "perjured testimony" were never mentioned.

Q. He told you that he would have nothing to do with it? A. That question was not discussed.

Q. I ask you whether he told you that, or whether he did not? A. I say he did not.

Q. He did not? A. I say he did not.

Q. How much money did you offer him if he would come in and testify that Newman had been working for him? A. I never offered him a cent.

Q. You did not? A. No, sir; not a cent.

Q. Not a cent? A. Not a penny.

Q. How much money did you offer the boarding-house keeper? A. The boarding-house keeper?

Q. If she would come in and testify?

A. I never offered her a cent.

Q. You never did.

A. I never discussed it.

Q. Don't you know that Gardner or someone else besides you were trying to procure such arrangements?

A. Not that I know of. I do not know anything about it if he did. If he did he never told me about it; I do not think he did. I think that matter was left in my hands.

Q. You are positive that was May 14th?

A. Yes, it was Monday, May 14th.

Q. What kind of weather was it that day?

A. Well, it was a pretty warm day.

Q. Was not raining or anything?

A. No, I did not get wet.

Q. It was not raining?

A. I believe it did rain after I got back to Seattle, in the evening, but I am not sure about that.

Q. Not during the daytime while you were ever there? A. I got back here about 3:30.

Q. You said it was a very warm day?

A. It was warm, quite warm.

Q. (Mr. METCALFE.) In the morning, at the time that you met Newman?

A. On the day that I was over there.

Q. (Mr. MARTIN.) At the time that you met Newman? A. Yes.

Q. Nice, clear day, was it? A. Yes, sir.

Q. Never rained at all?

A. No, sir. After I got back to Seattle it did start in raining. I know some two or three trips I made over there it did rain.

Q. How long have you been in the detective business?

A. Oh, not a great while. This time about two or three months.

Q. What business have you been engaged in?

A. I have been in a variety of different businesses.

Q. What are some of them?

A. Well, I have been clerking in the county clerk's office, and running a cigar business here in town, and I have done a little soliciting for insurance, and went to Alaska on a prospecting proposition, and a good many different things, and a good deal of the time doing nothing. There is one business I have never been engaged in, and that is trying to get people to testify falsely. I never asked anybody to do that.

Q. You never did.

A. No, sir. I have never been asked to do that, and I never have suggested it to anybody.

Q. If Murphy testifies to that he will testify to something that is not true? A. Undoubtedly.

Q. And the same as to the woman?

A. Undoubtedly, if they testified to anything of that kind. I do not think they ever told you anything of that kind.

(Testimony of witness closed.)

At this time further proceedings were adjourned until May 30th, at ten o'clock A. M.

Seattle, May 30, 1900.

Continuation of proceedings pursuant to adjournment.
2 o'clock P. M.

Present: J. B. Metcalfe, Esq., of proctors for the appellants; William Martin, Esq., of proctors for the appellee.

CAPTAIN J. WAITE, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) What is your full name?

A. William J. Waite.

Q. What is your business, Captain?

A. Captain of the West Seattle ferry.

Q. What has been your business?

A. Piloting and captain of steamboats for the last thirty-five years.

Q. Master mariner?

A. Yes, sir.

Q. How long have you been a master mariner?

A. It has been about twenty-five years.

Q. On what waters, captain?

A. Puget Sound waters.

Q. Twenty-five years on Puget Sound waters?

A. Yes, sir.

Q. How long have you been master of the West Seattle ferry between the city of Seattle and West Seattle?

A. About nine years.

Q. Do you know Charles H. Newman?

A. I have seen him.

Q. The appellee in this case?

A. Yes, sir.

Q. How long have you known him?

A. I should judge about two years, seen him going back and forth on the ferry. I knew him where he was working at the Oceanic Packing Company.

Q. Was that before he was supposed to have been injured?

A. Oh, yes.

Q. You knew him, then, when he was working at the Oceanic Packing Company's place, where is that?

A. West Seattle.

Q. How long has that been there?

A. Well, that is probably about two years ago, probably two years and a half.

Q. You know that Newman claims to have been injured in the collision between the steamship "Homer" and the brigantine "Blakeley"?

A. Yes, sir.

Q. Have you seen Newman crossing on the ferry here in the last—within what time, how long ago?

A. Well, I have seen him off and on, now, for the last two or three months.

Q. You made an affidavit, I think, in the continuance of the case from the time it was set for May 9 at San Francisco before the Circuit Court of Appeals, at that

time you stated, I think, that you had seen him about three months before that several times?

A. Probably about four months, I did not keep any correct time of it at all.

Q. Where did you see him, Captain Waite?

A. On the ferry, going back and forth on the ferry.

Q. Did Mr. Newman appear to be assisted by anybody when he was going backward and forward?

A. No, sir.

Q. Did you notice whether he used crutches or a cane?

A. I seen him several times with a cane.

Q. Did you ever see him without a cane?

A. I saw him the other day.

Q. How long since?

A. About two weeks ago, I think it was.

Q. Please fix that as near as you can, the date of it?

A. I could not say positively, but I should judge it was about two weeks ago I saw him coming on board and I called the attention of a man by the name of Fredericks that Newman looked all right now, and he says, "Yes, I guess he was not hurt very much."

Mr. MARTIN.—I move to strike that out as not responsive to the question.

Q. At this particular time here, within the last two weeks that you speak of, was Mr. Newman then assisted by anybody coming on board? A. No, sir.

Q. Did he use a cane or crutch when coming on board?

A. He had no cane or crutch when I saw him.

Q. What was his appearance, Captain, as to his physical health at that time?

A. He looked to me all right, he did not seem to have anything the matter with him.

Q. Did he walk naturally?

A. Well, I think he limped a little.

Cross-Examination.

Q. (Mr. MARTIN.) Where was he when you saw him?

A. In the pilot-house.

Q. Yes.

A. At the wheel, standing at the wheel; I saw him coming down the slip.

Q. Was the boat at a standstill?

A. Yes, sir, tied up in the slip.

Q. What were you doing, standing at the wheel?

A. Yes, sir, looking at the passengers as they came on board, it was about five minutes before we were ready to go and I always stand there when the five minute bell rings.

Q. You say you saw him limp?

A. He limped a very little, yes, but had no cane.

Q. How is your sight, Captain?

A. Well, it is pretty fair, I guess.

Q. Have not you some trouble in seeing at a little distance? A. Not that I am aware of, no sir.

Q. How do you know that it was Newman that you saw?

A. Well, how do I know that you are sitting there?

Q. Could not it have been someone else that you saw?

A. No, I do not think it was; I think I ought to know him, going back and forth there.

Q. You say you were well acquainted with him before he got hurt?

A. Not well acquainted with him, but saw him go back and forth on the ferry and spoke to him, said, "How do you do, Mr. Newman?" several times, he always addressed me, "How do you do, Captain."

Q. You do not know anything about how he was supported around his waist, do you? A. No, sir.

Q. Whether he had a steel jacket on or not?

A. How he was what?

Q. Whether he wears a steel jacket for the support of his body?

A. No, sir, I do not know anything about that.

Q. You say there was nobody with him?

A. No, no one with him at all. He had a bundle in his hand.

Q. When was that you saw him, you say?

A. The last time I saw him, as I said before, was about two weeks ago, I should judge.

Q. What date was it?

A. I do not remember the date.

Q. (Mr. METCALFE.) What date is this?

A. Supposed to be the 30th of the month.

Q. (Mr. MARTIN.) What date was it you saw him at that time?

A. About two weeks ago, I should judge.

Q. What day of the week was it you saw him?

A. I could not say that particular day.

Q. You cannot fix the date on which you saw him?

A. I just happened to see him coming down the slip the same as—

Q. You say that was not to exceed two weeks ago?

A. I should say about two weeks ago, on Saturday, it seems to me it was on Saturday, if I remember right.

Q. It was on Saturday? A. Yes, sir.

Q. And that would be, then, the 12th or the 19th?

A. When was Saturday?

Q. Saturday would be the 12th or the 19th?

A. Well, probably it might have been Saturday or Friday, I did not pay particular attention as to the date, I just happened to see him coming down the slip.

Q. Is there not any way that you could fix the date?

A. None that I know of, I just saw engine run down the street here at a fire; I know the engine ran down apparently to go to a fire, I could not fix the date of it at all, that was half an hour ago.

Q. You know that was the day, don't you?

A. Yes, if you should ask me a week from now I should say that is probably on such a day, but I am not sure.

Q. You could say it was the same day that you gave your testimony in such and such a case, could you not?

A. Yes, sir.

Q. Now, cannot you say some occurrence like that you know the date of, so that you could fix the date?

A. I do not think that I could, because I did not pay attention enough to it.

Q. We are entitled, Captain, to know the date. It may be that you are entirely mistaken; we want to be able to prove that he was not there, and therefore we want to fix the date, and it is important that you should do so.

Mr. METCALFE.—We are not afraid that you can disprove it.

A. I cannot fix it because I do not know exactly.

Q. You are positive of it that it was on Saturday, are you?

A. No, sir, I am not positive that it was Saturday.

Q. You stated a moment ago it was Saturday?

A. It runs in my mind at the present time that it was on Saturday, but I could not fix the date exactly. I will tell you what made me notice him so much, seeing him walking down the slip I said to him—

Q. You were up in the pilot-house, were you?

A. I was in the pilot-house.

Q. Did you speak to anyone else at that time about it?

A. I think Fredericks was standing in the pilot-house and I said, "That fellow looks to me as if he was not hurt very much."

Q. You made that remark?

A. Yes. He knows the man very well himself; in fact, I think he worked for him.

Q. Where is Fredericks?

A. He is in town somewhere, I am not quite positive, but I think it was—

Q. We want you to know something positive. You say you do not think that he was standing there?

A. I did not say that. I think that he was standing there, he is always in the pilot-house when he goes over.

Q. You say now that you spoke to him at that time, you are positive of that as to anything else you have testified to?

A. No, I am not as positive as that I saw Newman.

Q. Then, you will not swear that you spoke to Fred-

ericks about it, and said that you did not believe that he was hurt very much?

A. No, sir, I will not swear positively anything of that kind.

Q. Then, why did you say a moment ago that you did say that?

A. Well, I think that he was. I think that he was standing at the pilot-house reading the paper, and he sat on a seat about that high (showing). I would not swear to it positively because he comes and sits in the pilot-house.

Q. You have talked this matter over with Mr. Metcalfe, have you not?

A. No, sir.

Q. What?

A. I have simply—

Q. Answer my question.

A. No, sir, I have not talked it over with him.

Q. You have not?

Mr. METCALFE.—Not since he made the affidavit.

Mr. MARTIN.—I object to the counsel prompting the witness.

Mr. METCALFE.—Just state the facts.

Q. You say you have not talked that over with Mr. Metcalfe?

A. Not as to this statement with Metcalfe.

Q. You were at his office?

A. He sent for me.

Q. You signed the affidavit?

A. Yes, sir.

(Testimony of witness closed.)

E. A. GARDNER, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Give your full name?

A. Erwin Alonzo Gardner.

Q. What is your business?

A. I conduct a detective agency in this city.

Q. Do you know C. H. Newman, the appellee in this case?

A. I know him.

Q. Ever see him, ever meet him? A. Yes, sir.

Q. Now, please state to the commissioner—

Mr. MARTIN.—I object to the competency of this witness. And I want to question the witness before he proceeds.

Q. (Mr. MARTIN.) How long have you resided here?

Mr. METCALFE.—How long have you resided here?

Mr. MARTIN.—I want to make my objections to the competency and I propose to show that the witness is not competent to testify.

Q. (Mr. METCALFE.) Mr. Gardner, how long have you lived on Puget Sound?

A. Nineteen years this fall in Seattle.

Q. In that time what has been your business as near as you can recollect? Run over your life if you want to.

A. During the nineteen years?

Q. Yes.

A. I was part of the time in the police department, and part of the time in the customs service, United States Customs, and the balance of the time I have been conducting a detective business here.

Q. Now then, do you know, as I asked you before, the appellee in this case, C. H. Newman, state when you last saw him and under what circumstances and how you came to know him?

Mr. MARTIN.—I object to that and I want to ask the witness some preliminary questions.

Mr. METCALFE.—I desire to have Mr. Gardner give his testimony here, as proctor for appellee in this case can ask Mr. Gardner on cross-examination any question that he wants to and he will answer.

Mr. MARTIN.—I propose that the witness shall not testify in this case.

Q. (Mr. MARTIN.) You understand, Mr. Gardner, that we have a statute here in this state providing that persons that have been convicted of certain crimes cannot testify, do you not?

A. I am not familiar with your statutes on that subject.

Q. I ask you, Mr. Gardner, as a preliminary question, if you have ever been convicted of a crime?

Mr. METCALFE.—You may state what the facts are and that you were pardoned by the President of the United States, and then go on and state any other facts that you want to.

Mr. MARTIN.—I want him to show his competency to testify first.

A. Of course, if they expect to bolster up the steal they are attempting to perpetrate against the owner of the Homer, I am ready to answer their questions. You are the first man that has ever asked that question, and I have lived here nearly twenty years. No gentleman ever asked it and no gentleman ever would ask it.

Q. I ask you if you have? A. I will answer you.

Q. State the facts.

Mr. METCALFE.—Just take your time, Mr. Gardner, and relate the facts for the benefit of Mr. Martin.

Mr. MARTIN.—I ask you if you have?

Mr. METCALFE.—If you are willing to go on record in such a manner as that.

Mr. MARTIN.—I am willing to stand on the laws of this state.

Mr. METCALFE.—You are entitled to the benefit of such a method of practice.

A. I am willing to say that the chances are that the counsel did not know the facts. The laws of this state do not touch the offense with which I was charged. You asked the question if I was ever convicted of a crime?

Q. Yes.

A. Well, I suppose that it would be called a crime. I suppose under the United States Statutes it was a crime. I was convicted under section 3082 of the Revised Statutes of the United States, which prescribes the penalty for the introduction of goods into the United States, dutiable goods in the United States, on which the duty had not been paid or secured to be paid.

Q. Were you ever—

A. (Continuing.) I will answer this question now that you have opened it. I will finish it. You want to know why and the circumstances under which that conviction was obtained; they are as follows:

Mr. MARTIN.—I object to the circumstances.

A. It don't make any difference.

Mr. METCALFE.—You have brought that out and it has got to go down.

A. In the indictment charging me with the offense that I have stated was the name of another person—I do not suppose that I am compelled to state—I do not want to state that—

Mr. METCALFE.—State his position in society, if you want to.

Mr. MARTIN.—I object to cumbering the record.

A. (Continuing.) The attitude you are taking now is similar to the attitude—

Mr. MARTIN.—We will show your attitude in this case.

A. (Continuing.) There was the name of another party in the case, and the case was called in the United States Court at Albany in New York, in October, 1888. The counsel for the person whose name appeared in that indictment with mine, had entered into an agreement with Daniel Lockwood, United States District Attorney for the Northern District of New York, that agreement providing that his client should be tried first at the term of stated. It was a holdover term from the Utica term, and the court never sat more than two weeks at Albany, and it was distinctly understood that the trial of the case that I have mentioned would consume all the time of that term not consumed in the disposition of minor cases, selling liquor to Indians and so forth on the reservation. My counsel, Richard Crowley, was consulted in the matter and agreed that the other case should be tried at the Albany term. When the time arrived and the District Attorney, Mr. Lockwood, was ready to take up the trial of these smuggling cases, he announced to the Court that the Gardner case would be tried first. It was a direct violation of his agreement with Judge Brundage, that his client's case should be tried first. No preparation had been made for my defense at that time, of course, for the reason I have stated, that the term of

court would be consumed in the trial of the other case. I expected to be tried under the agreement that had been entered into at Albany in January, and hence there was no preparation for my case. After considerable time had been consumed in arguing by the District Attorney and the counsel for the defendant, the judge announced that he would continue or grant a continuance of the Gardner case to the Albany term. That Gardner could not be tried at the Albany term in justice to him under the agreement that they had entered into, Judge Brundage's client had made preparations for his defense and was prepared to go to trial. At great expense to himself and to his client—I have gone a little further than I intended—when the Court announced that he would continue the Gardner case—

Mr. MARTIN.—This all goes in under my objection.

A. When the Court announced that he would continue the Gardner case, then the District Attorney, Mr. Lockwood, announced that he would continue the other case, for which Judge Brundage was counsel, to the Albany term. Judge Brundage's client had made every preparation for his defense at great expense. They came to me and said: "It means everything to us to be able to go to trial at this term of court, inasmuch as we have prepared for it, and if you insist on your continuance to prepare for your trial, it means everything to us and possibly defeat, because of the political conditions that are involved in this case." It was explained in the discussion the situation fully and at the end of that day I announced that I would go to trial rather than force the other man in the indictment to a continuance. I

went to trial without a witness; there was not one word spoken in my defense; I entered my plea of not guilty to the case, and the government introduced its evidence and the case was closed. I was convicted under these conditions.

Q. (Mr. METCALFE.) What has been the result of that conviction, state whether the President of the United States—

A. The President of the United States has granted me a full and unconditional pardon. Understand that the conviction was upon section 3082 of the Revised Statutes, which is a misdemeanor, punishable by one day's imprisonment or one dollar fine. It is not a felony. I have never been charged with a felony, and I have never been charged with attempting to bunco anybody out of any money.

Q. (Mr. MARTIN.) Is that the only offense you have ever been convicted of?

A. The only offense that I was ever charged with.

Q. You were never convicted of smuggling opium out here or plead guilty to a charge of smuggling opium?

A. I have answered your question, sir. That is the only offense that I have ever been charged with and if you can produce any other offense that I was ever charged with—I am under oath.

Q. Then, you never were convicted out here in this state of smuggling opium?

A. Nor any other. I never was convicted of smuggling opium or any other offense.

Mr. MARTIN.—I had heard that Mr. Gardner had been convicted of some crime, I did not know what it was. The statute, section 4215 of McLaughlin's Code, is

as follows: Section 4215—Conviction of crime. No person offered as a witness shall be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: Provided, that any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon. 1891, 33, 1; 2 H. 1647.”

Mr. METCALFE.—You are not contending that he was convicted of perjury.

Mr. MARTIN.—I was asking him to say—

Mr. METCALFE.—Are you asking Mr. Gardner whether he was convicted of perjury under that statute?

Mr. MARTIN.—I was asking Mr. **Martin* if he was convicted of a crime and what it was.

Mr. METCALFE.—I desire the record to show this proceeding, so that the Court will see your attitude in this matter. Don't you know that there is a statute which provides that when a pardon has been granted that it exonerates a man fully and entirely, don't you know that?

Mr. MARTIN.—This statute is the only statute that we have relating to the matter, and if the facts had brought him under this section I should have opposed his testifying.

Mr. METCALFE.—You are not candid or fair in the matter. It is but fair to the witness that the witness should show the statements that have passed between counsel in this matter, so that the Court may know the attitude of the counsel for the appellee in this case.

*This appears “Martin” in original record.

Q. (Mr. METCALFE.) Now then, do you know, as I asked you before, the appellee in this case, Mr. C. H. Newman; just state when you last saw him and under what circumstances and how you came to know him?

A. I met Mr. C. H. Newman at his residence in West Seattle on the afternoon of the day—

Q. State who went with you at that time?

A. In May or about the middle of May, I do not remember the date or the day of the week.

Q. May, 1900?

A. May 19, 1900. Mr. Mike Kelly was with me and also my stenographer. I went to the Newman residence and was shown into the house by Mrs. Newman, and I asked the gentleman who met me in the house if his name was Newman and he said it was, and I told him that my name was E. A. Gardner and that I represented the owners of the "Homer," that I was employed in the case, against him. That I had learned that he and others had charged that certain statements or affidavits that had been made were false, and that I had come to him for the purpose of righting any wrong, if any had been inflicted, and to give him an opportunity to show that they were false, if such was true. He refused to talk with me and absolutely refused to answer any of my questions.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and move to strike the answer as cumbering the record.

Q. Continue, Mr. Gardner.

A. I said to Mr. Newman that I did not desire to in any way do him an injury and that my client did not fear the truth, and that I did not expect that he did when

I came to his house, but I could not get him to make any statement or to answer any question, and I bid him good day. That is the only time that I ever saw Mr. Newman.

Q. Who was present with you at that conversation?

A. I have stated.

Q. Who were they?

A. I have stated who they were.

Q. Was Mike Kelly?

A. Yes, sir.

Q. I will ask you at that time if Mr. Kelly, to your knowledge, identified Mr. Newman as the party whom he met painting the sloop?

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and hearsay.

A. I asked Mr. Kelly as soon as we had left the house if the man we had just left was the man that he saw painting the sloop.

Mr. MARTIN.—I move to strike the answer for reasons last stated.

A. (Continuing.) And I said to Mr. Kelly, "If there is a shadow of doubt in your mind as to its being the man that you saw painting the sloop then say so and give him the benefit of the doubt, but if you are positive that he is the man then say so." And he did not have any question, he said, "There is no question at all but what that is the man."

Q. Mr. Gardner, while you were there, state, as far as you know, what the appearance of Mr. Newman was as to health and vigor from the appearances that you saw during that conversation with him in the presence of Mr. Kelly and yourself?

Mr. MARTIN.—I object, the witness has not been shown to be a competent witness to testify to the man's condition.

Q. You are not a doctor?

Mr. METCALFE.—We will admit that he is not a doctor, nor is he an expert.

A. The question is, what was his appearance?

Q. Yes, as to health and vigor.

A. Well, you ask a pretty difficult question for me to answer. Of course, I will answer it just exactly as it is. Mr. Newman was lying on a couch; I should say that there was as many as three or four pillows on the couch; he was lying on these pillows at full length on the couch. He looked pale as a man would who had been confined to the house for several days or two or three weeks. He was excited and nervous to quite an alarming degree.

Q. What did that proceed from, as you understood it?

Mr. MARTIN.—We object to what it proceeded from.

Q. What did he say to you?

A. Oh, he said to me that he had been annoyed a good deal by men calling at the house, and that it had annoyed him more particularly because of the effect that it had on his wife; and he said that he had thought of employing a bouncer, a man to stand at the door and drive them away, and said that he would do it himself if he felt better. I thought possibly his nervousness was the result of anger as much as anything else.

Q. Angry that you had come to him for the purpose of ascertaining these facts?

A. Yes, sir. I said to him, "Mr. Newman, I have come to you frankly and honorably and not for the pur-

pose to in any way take advantage of you or attempt to. If you were not painting that sloop it would be easy for you to prove it, and if you were not working on the road, it would be easy for you to prove it. We are not afraid of the truth on these subjects and you should not be.”

Q. Mr. Gardner, I will ask you if you had anything to do with Mr. Mike Kelly, one of the witnesses in this case, going over to West Seattle?

A. I employed Mike Kelly to find a man by the name of Billy Gray. I think Billy Gray is the name of the man that I told Kelly I wanted to locate and that I thought that he could get a trace of his whereabouts by seeing a man by the name of Charles Newman that lived at West Seattle; and I asked some one who was in the office at that time from West Seattle—I do not remember just who it was—if they knew Charles Newman over there and they said that they did, and I asked them to tell Kelly just where Mr. Newman’s house was, the residence was, in order that he might go directly there and ascertain from Mr. Newman if he knew where Billy Gray was and Kelly started to locate Billy Gray. I told Kelly incidentally that I would like to know how Newman. I said, “If you see Newman, let me know what his physical condition is as you see it. I understand that he was hurt some time ago, and I would like to know if he is recovering or if he is not recovering. I would like to know what the facts are as to his condition. However, this is only incidental, Mr. Kelly; I am not particular about it, and do not spend any time on that, but find Mr. Gray for me.” That was Kelly’s employment by me, and he came in and reported that he

had seen Mr. Newman and Newman knew Gray, they had been shipmates together and that Newman identified the vessel that Gray was on, but thought that he was on some steamer, and I kept Kelly for two or three days looking for Gray.

Q. What was the real object in your sending Kelly over there—was it to ascertain about Newman or Gray? And tell whether Kelly knew what your object was?

A. Kelly did not know what I wanted.

Q. What was your object?

A. My object was to know what Newman's actual condition was; his physical condition, as well as a man could tell from observation.

Q. Then, your instructions to Kelly were what?

A. To locate Gray, Billy Gray, but to note in meeting this man Newman, if he met him, to note his condition and how he was getting along, what his physical condition was. Kelly returned and told me that he had seen Newman, that he found him painting his sloop and talked with him about Gray, and I asked him something about Newman, what his appearance was and what he was doing in addition to his painting the sloop, if he saw him walking, and he said he did not.

Q. I will ask you if you send men out from your office, whether that particular man knows the object, the real object of his visit?

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and cumbering the record.

A. That depends altogether on circumstances, General. All cases are not handled alike.

Q. Was Kelly in this instance to know what the real object of his mission was?

A. He was not, no, sir.

Q. Your object was to ascertain what in giving Kelly these instructions?

A. Well, I can better recall your instructions to me.

Q. Well.

A. I presume you remember where you met me and what the conversation was.

Q. Just state it.

A. I met General Metcalfe on First Avenue in front of the Pioneer Building, and he said to me that he wanted to talk with me on a matter of some importance to him. We stepped into Hardy & Hall's store. General Metcalfe said to me that he wanted to learn the facts concerning the physical condition of a man by the name of Charles Newman, and asked me if I could assist him in getting the exact physical condition of the man named, as near as it could be obtained from a person seeing him. I told him I could. As the result of that interview I sent Kelly, as I have already stated, to see Mr. Newman. My true purpose was to know what Mr. Newman's physical condition was, as well as Kelly could state it from seeing him.

Q. Did Kelly at that time know your true purpose from your instructions?

A. He did not know that I had any particular interest in Newman. I would like to have the record show before we get through, that I am authorized by several of the banks, whose names I will give, to refer to them as a reference at any time that I desire as to my standing in this community for truth and veracity; also to several of the prominent law firms in the city, and the

largest and most prominent business houses in the city, the names of which I will give if desired.

Q. Give them all.

A. The First National Bank.

Mr. MARTIN.—I object as cumbering the record. This is not admissible.

A. The Puget Sound National Bank, Dexter Horton & Company Bank, Washington National Bank—that is four of the banks; Messrs. Ballinger, Ronald & Battle; Struve, Allen, Hughes & McMicken; Schwabacher Bros. & Company; Redelsheimer & Company, and any reputable business house in town; not only that, but any reputable law firm in the town will testify as to my truth and veracity and integrity.

Cross-Examination.

Q. (Mr. MARTIN.) Now, your general purpose, Mr. Gardner, in sending Mr. Kelly over there, was to find out what you could about Newman?

A. My real purpose, I have stated that clearly.

Q. I insist on an answer.

A. My real purpose in sending Mr. Kelly to West Seattle was to ascertain what Charles H. Newman's physical condition was, as near as Mr. Kelly could tell from observations.

Q. Then, it was not for the purpose of finding this man Gray at all?

A. No, sir, it was not. I did not care about Gray, no more than I care about you.

Q. That is what I wanted to find out. Now, General Metcalfe suggested to you the advisability of pretending to be hunting for Gray?

A. No, sir, I do not think he did.

Q. Do you know Mr. Gray?

A. No, I do not know Mr. Gray.

Q. How did you come to pick on Mr. Gray?

A. I made some inquiries after I had got through with Mr. Metcalfe, to advise myself as to the ground that I was going to travel over.

Q. How did you come to inquire about Mr. Gray?

A. I don't know that I inquired after Mr. Gray; I inquired of the vessels that Mr. Newman had been in.

Q. You did not know Mr. Gray, did you?

A. I have said so.

Q. You did not know him?

A. I have said that I did not know him, but if you will give me time I will answer this just as intelligently — You cannot make me say something that I do not want to say, or that I do not know to be true. I said that I had made some investigation as to the vessels that Mr. Newman had been in, and who he had been shipmates with, and I learned that this man Gray had been shipmates with him, hence I suggested Gray as the man; I do not know who I learned that from.

Q. You know that Mr. Newman is a ship carpenter, don't you?

A. I could not swear to it, I do not know whether he is or not.

Q. You do not know whether he is or not?

A. No, sir, I do not know whether he is or not.

Q. Your investigations did not reveal that fact?

A. I did not care about that fact; I do not care whether he is a ship carpenter, or what he is, that had

nothing to do with me. Possibly I learned more about Mr. Newman than you would care to have me tell.

Mr. METCALFE.—Go on and tell any further facts that you know in the case that I have not brought out. I have only asked about such facts as advised of. You may state any further facts.

Q. (Mr. MARTIN.) You stated to Mr. Newman, did you, that you went over there as a friend of his, did you?

A. I did not, I did not say so to you, I made no such statement to him or to you either.

Q. You made a statement that you told Newman that you came over there, not for the purpose of doing him any wrong.

A. I made that statement.

Q. And yet you made that statement for the purpose of trying to see if you could not throw Newman off his guard, to see if you could not inadvertently get some statement from him that would be detrimental to him?

A. I did not.

Q. What did you have your stenographer over there for?

A. In order that there could be no equivocating or departure from the truth. My purpose in taking the stenographer over there was so that every thing should be taken down. You people had charged falsehood, and you charged that Kelly had lied and I know that Kelly had told the truth.

Q. You were not over there, were you?

A. No, but I know Mike Kelly.

Q. That is all right. I will bring in a lot of witnesses that know the parties and know facts.

A. That I have nothing to do with; but I say that I know Mike Kelly, and if you can impeach Mike Kelly in this matter, go ahead and do it.

Q. Now, you have been employed by these parties for the purpose of trying to procure some evidence with the intent of trying to reduce the judgment that was awarded in this case, have you not?

A. No, sir.

Q. You have not?

A. No, sir, I have not.

Q. You have not tried to do that?

A. No, sir, I have not.

Q. You have been quite anxious in trying to procure that evidence for the appellants, Mr. Metcalfe being their proctor, for the purpose of trying to reduce the judgment that Mr. Newman, have you not?

A. No, sir.

Q. Not at all?

A. No, sir, not at all.

Q. What were you paid for?

A. I was paid for the services rendered in the effort to show what the real true physical condition of Charles H. Newman was, and beyond that I know nothing; I do not know anything about a judgment.

Q. How much were you paid for it, Mr. Gardner?

Mr. METCALFE.—I object to that; you need not answer that question if you do not want to.

A. I am willing to state what I was paid.

Q. How much? A. \$20.80.

Q. Do you expect anything else?

A. I expect I will get pay for everything that I do.

If I ever do any work for you you will have to pay me.

Q. Have you an arrangement whereby you will get more?

A. I have an arrangement that I will get a per diem, my regular rate that I charge any client that I work for.

Q. Have you any arrangement whereby you are to get any money in the event they procure a favorable judgment upon any work that you have done?

A. If you knew me better you would not ask that kind of a question, but I will answer that question. I have no such arrangement and there has been no reference to the judgment made by General Metcalfe to me, nor reference to any compensation beyond my regular compensation, and there has been no talk about that.

Q. Then, you have not any arrangement as to a contingent fee?

A. No, most emphatically not. As I say, if you knew me better, you would know that I had no such arrangement, I do not trot in that class, I am conducting a legitimate detective business.

Redirect Examination.

Q. (Mr. METCALFE.) I understood you to say on your direct examination that you told Newman when you began your conversation, that you represented the case against him? A. I did, sir.

Q. Was that said so that Mr. Newman could understand it and could hear it?

A. Most emphatically, sir, it was.

Q. In whose presence was that said?

A. It was said in the presence of Mr. Newman and his wife, Mike Kelly and my stenographer.

Q. Mr. Gardner, you stated to the learned proctor for the appellee here, that there were other facts concerning Mr. Newman in this case, and relevant, that you did not tell, if he would permit you to tell them, what were they?

A. I have a statement made by a party who was ship-mate of Mr. Newman's.

(Testimony of witness closed.)

At this time further proceedings were adjourned until Friday, June 1, at 2 o'clock P. M.

Seattle, Wash., Friday, June 1, 1900.

Continuation of proceedings pursuant to agreement at two o'clock P. M.

ISAAC FREAR, a witness for and on behalf of appellant, called and duly sworn, testified:

(Mr. METCALFE.) What is your full name, Mr. Frear? A. Isaac Frear.

Q. What is your business, please?

A. Fruit and cigar stand.

Q. Just describe where that is, please?

A. Right next to the Seattle ferry.

Q. How long have you been there, Mr. Frear?

A. Been there ten months on the 7th of this last month.

Q. Do you know Mr. C. H. Newman?

A. I know him by sight, that is all.

Q. How long have you known him?

A. Well, the first time I seen him I suppose was about six weeks ago, or something like that; I couldn't say exactly just what date it was.

Q. It was about six weeks ago? A. Yes.

Q. Do you recollect seeing him in the city of Seattle about that time?

A. Yes, he was here all right.

Q. About what time, fix it as near as you can, Mr. Frear, please?

A. Well, I couldn't say exactly; I have no idea at all whether it was the first of the month or when it was, somewhere about a month or six weeks ago, but I couldn't say just exactly when it was.

Q. Do you mean the first of May?

A. I couldn't say exactly whether it was that or earlier.

Q. Further back than that?

A. Further back in April.

Q. Well, it would be anywhere between the first of May—well within the last four or five weeks?

A. Sometime in the last four or five weeks, I guess, I couldn't say for sure.

Q. You don't recollect the exact date, do you?

A. No, I don't.

Q. Do you recollect of having any conversation of any kind or character with him, or speaking to him on that day?

A. No, I don't know of nothing particular that I had with him at all.

Q. Well, do you recollect having a little talk with him on that day?

A. Oh, I passed the time of day to him and such as that.

Q. Do you recollect whether or not at that time, that you speak of now, as having seen him over—do you mean this was at your fruit shop right there?

A. Right at the stand there; he was waiting for a boat going over to West Seattle.

Q. Do you recollect of his saying anything at that time and place, about what he had with him or what he had come over for? A. I don't.

Q. Was there anything said about his having come for paints and oils that day?

A. Well, I couldn't say now—I wouldn't swear whether he said anything or not, I—

Q. Well, what was it he said about that, Mr. Frear?

Mr. MARTIN.—That is objected to; the witness says he can't remember what he said.

A. He just passed the time of day, you know, I don't know what it was; he was talking about something, but everybody was coming in and out all the time, you know, just passing remarks, you know, and I can't remember what everybody says.

Q. Do you remember anything that was said about that particular matter at that time?

Mr. MARTIN.—I object to counsel cross-examining his own witness in this manner.

A. I say, when a man is just talking to me, I am just passing backward and forward, you know, and I don't pay any attention to him at all.

Q. I know, but what was said by Mr. Newman at that time or by yourself as to what he had in his hand, or what he came for that day? Was there anything said at all about paints and oils?

A. Didn't say nothing to me about them.

Q. Well, did you hear him saying anything to anybody in your presence about them?

A. Not that I remember, I didn't.

Q. What?

A. He might have said something and I didn't pay any attention to it.

Q. He might have said something of that kind, and you not pay any attention to it?

Mr. MARTIN.—I object to counsel cross-examining his own witness. The witness has said several times that he does not remember of his saying anything at all.

Q. Now, I wish to call to your memory—you understand, Mr. Frear, that I am just simply trying to get at what you know about this—

A. Certainly, that is all right enough, but a man might say something to me, you know, and I running from one side of the stand to another, I wouldn't hear him.

Q. Do you recollect of seeing Mr. Kelly here, down there? A. I don't.

Q. Look at this gentleman here (pointing to Mr. Kelly), you have seen him before?

A. Oh, I have seen him before.

Q. Did he not come down about that time and ask you about Mr. Newman?

A. I couldn't say whether he did or not; I couldn't swear one way or the other, to tell you the truth.

Q. Do you recollect his saying anything about Mr. Newman's coming over that day to get some paints and oils?

Mr. MARTIN.—I object to that, for the reason that it makes no difference what was said between Kelly and the witness, it not being said in the presence of the appellee, it is simply hearsay and not admissible, and is simply encumbering the record.

Mr. METCALFE.—The witness is undoubtedly an adverse witness, and evidently does not want to testify against Mr. Newman.

Mr. MARTIN.—He is not an adverse witness at all.

Q. You don't want to testify against Mr. Newman, do you?

A. I have nothing against him nor nothing for him; he is a man I ain't acquainted with; I don't know what it is about or anything of the kind, and I don't want to take any sides in it.

Q. Well, you don't want to testify against Mr. Newman, do you?

A. If it is anything to the truth, I do.

Q. Wouldn't you rather testify for him than against him?

Mr. MARTIN.—I object to that as a cross-examination of counsel's own witness; the witness is trying to tell the truth and counsel is trying to get him to tell something else.

A. No, not a bit, none whatever.

Q. Now, was anything said in the presence of myself or Mr. Faben, the day we were down there, about Mr. Newman's having said he came over that day for paints and oils?

A. I might say something that he had a little bundle with him, or a bucket, I couldn't say, but it is very seldom a man comes in and tells me what his business is, what he is over for.

Q. That is all right, but was there anything said at that time about that particular fact?

Mr. MARTIN.—That is objected to as immaterial.

A. I did say something, you asked me if he had been over after paints and oils, and I said, I couldn't say he had, but he had a little bucket or parcel with him, and I think a little bucket, but whether it was a tin or wooden one, I couldn't say—didn't take any notice in particular; you asked me whether he had a stick with him or not, and I told you I couldn't say whether he had a cane or not.

Q. But he had a paper parcel and a bucket with him, did he?

A. I think he did, I am quite sure he did; I am not sure what they were, whether it was paint or oil or meat, or what it was.

Q. Your memory is very uncertain about all of this, is it?

A. Yes, it is certainly. I paid no attention to it, and a man may be talking to me there when I am jumping from one side to the other, and I pay no attention to it, and I not understand him sometimes.

Mr. METCALFE.—That is all.

Cross-Examination.

Q. (Mr. MARTIN.) You know that Mr. Newman is in a crippled condition, do you not?

A. Well, I heard so, and I have seen him pass by with a stick, and I think he is crippled; but then you can't tell by the looks of a man, whether he is or not; I am crippled myself, but no one would think it.

Q. He is crippled so he can't stoop over, is he not?

A. I couldn't say, sir. I never saw the man trying to stoop; I never saw the man trying to do that, whenever he was talking to me, he was standing straight.

Q. You say he looked as though he was crippled?

A. Yes, when he is walking, he does, that is all I can tell you.

Q. In every movement?

A. Yes, certainly he does.

Q. You are a man of considerable experience in the world?

A. Well, I have had a little bit; I have been working since I was about ten years of age.

Q. You know that it requires a very strong back for a man to follow the business of a ship carpenter?

A. I should say it does. At times he has got to lay on his back three or four hours at a time, when he is working.

Q. Do you think Mr. Newman will be able in the future to follow the business of a ship carpenter?

A. I couldn't say anything about that at all, whatever, I couldn't know anything at all about that.

Q. Does not his present condition indicate that he never will be able to do that?

A. Now, I couldn't say for that, I don't know anything about that, sir.

Mr. MARTIN.—That is all.

Redirect Examination.

Q. (By Mr. METCALFE.) You don't recollect, do you, the conversation that occurred between you and Mr. Kelly at or about the time that Mr. Newman came over to your place there and you saw him there that day, do you, Mr. Frear? A. I don't, sir.

Q. You do not remember that? A. I don't.

Mr. MARTIN.—I object to the question, because it does not make any difference whether he does or does not remember it, or whether he had a conversation with Mr. Kelly, or did not have a conversation with Mr. Kelly; he might have had a conversation with a hundred people, and I object to counsel purposely encumbering the record with such attempted hearsay stuff, and move to strike it all out, and move to strike all the evidence that counsel has given hitherto as simply hearsay evidence and not admissible.

Q. You recollect, Mr. Frear, do you, of having a conversation with Mr. Kelly, the gentleman here, present, at or about that time—this gentleman right here (pointing to Mr. Kelly)?

A. I don't know anything at all whether I seen that man that day or not, but I have seen him several times around that place, off and on, you know, coming back and forward.

Q. What I want to fix is this: Do you recollect his asking you some questions about Mr. Newman at any time?

A. I don't recollect his speaking about it that day.

Q. I don't mean that day, but any time?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, and immaterial, and I move to strike it all out as immaterial.

Q. Do you recollect Mr. Kelly having any conversation with you about Mr. Newman at any time within the present year?

A. Why he might speak to me about it, I could not say he didn't; he might do it, but I paid no attention to

him, or he might talk to me there at the time,, and as I told you, men were coming in all the time and I was jumping from one place to another, and I didn't pay any attention, and may be I didn't hear him at all.

Q. What is your nationality, Mr. Frear?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, and immaterial.

A. I have no knowledge of it whatever, to tell you the truth.

Q. I am asking you now, what nationality you are?

A. Oh, I am a Johnnie Bull.

Q. You are a what?

A. I am a Johnnie Bull, an Englishman. I belong to the county of Cumberland, north of England, that is where I belong.

Q. Do you recollect having a conversation about Mr. Newman with the witness here, Mr. Kelly, do you not?

Mr. MARTIN.—That is objected to because he has answered several times, that he does not recollect having any such conversation.

A. No, sir, I don't. I might have, I told you, but I have forgot it, if I did.

Mr. METCALFE.—That is all.

(Witness excused.)

MICHAEL KELLY, recalled as a witness on behalf of appellant, testified:

Q. (Mr. METCALFE.) Mr. Kelly, you recollect talking with Mr. Frear, the witness last on the stand?

A. Yes.

Q. Any time within the last six weeks, about the Newman case.

A. Yes, sir.

Q. State what that conversation was, and the date of that conversation?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, immaterial, hearsay, and not admissible.

Mr. METCALFE.—The object of this testimony is to fix the date at which this conversation occurred which Mr. Frear seems unable to do.

A. Yes, it was on the 24th; I was at West Seattle on the 23d, and on the 24th I went down again, and I asked this gentleman if he knew Mr. Newman and he says, “Yes, he was over here a day or so ago after some paint and oil”—

Mr. MARTIN.—I move to strike out the answer of the witness as incompetent, irrelevant, and immaterial, and hearsay.

A. (Continuing.) That was about the remark, pretty near all that was said. I asked him another question about the matter and walked away.

Q. That was on what date?

A. That was on the 24th of April.

Q. He said that Mr. Newman said he was over for some paints and oils?

A. Yes, sir.

Mr. METCALFE.—That is all.

Cross-Examination.

Q. (Mr. MARTIN.) Mr. Kelly, how many times have you been over to West Seattle?

A. Twice, two trips—that is, lately you mean, regarding this case?

Q. Yes.

A. Of course I have been there hundreds of times before that.

Q. But concerning this case, how many trips have you made over there? A. Two trips.

Q. Haven't you been over there more than that?

A. No.

Q. That was on 23d and 24th?

A. No; the 23d and then since, I don't know just what date it was, I and Mr. Gardner went over—

Q. I thought you said you were over there then, and then again on the 24th—

A. No; the 24th I was down to this man's place, down to the slip, and didn't go over.

Q. His place is down on this side?

A. Yes, right here at the foot of the street; that was on the 24th.

Mr. MARTIN.—That is all.

(Witness excused.)

Adjourned.

Monday, June 11, 1900.

Continuation of proceedings pursuant to adjournment.

G. L. IDE, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) What is your position?

A. Deputy United States marshal.

Q. I will ask you if you served that subpoena (showing) on Mr. Newman today?

A. Yes, sir, I served a copy of this—the copy was the same as this, though, there was no difference.

Q. On Charles H. Newman in West Seattle?

A. On Charles H. Newman in West Seattle.

Q. State to the commissioner what occurred when you served the subpoena on him?

A. I simply went to the door and he came to the door first to look out, parted the curtain and looked out and then came to the door and opened it, and I started to talk to him, and he shut the door in my face—he asked first what I wanted—he said, “If you have any business with me, what is it?” And I said I was the deputy United States Marshal and had a paper to serve on him, and he opened the door and I stepped in the hall, and I handed it to him and read it to him and handed him the copy, and stood talking a few minutes, and I tendered him the witness fees and he refused to accept them, and then we stopped and talked about it for some time, probably a minute, or a half a minute, and then he turned around and said, “I will call my wife”; and he went out and called her, and I tendered him the money again, and tried to explain to him that he ought to accept the money, that it was simply a matter of claiming his witness fees and that he was entitled to it, but he positively refused; he said until he saw his lawyer, and that was all.

Q. How did he appear, Mr. Ide; did he appear to be sick and crippled?

A. Well, he walked with a cane; he had a cane in his hand, and I think he used it; he could walk fairly well, he walked out in the hall—he must have walked out in the hall to get to the door and he walked back into the other room and called his wife, and said, “Sit down.” It didn’t appear to me that he was crippled, but I could not tell. If I was testifying to his sickness, I would not want to say anything about that.

Cross-Examination.

Q. (By Mr. MARTIN.) Did he appear to you to be a cripple?

A. He did not appear to me to be a cripple, but I would not want to testify as an expert.

Q. Did you go there for the purpose of examining him? A. No, sir.

Q. You are not a doctor?

A. No, sir, I am not; although I have had considerable experience in it—I probably could make an examination, if I had to.

Q. You did not make any examination?

A. I did not.

Q. And you say he walked with a cane?

A. Yes, sir, he did.

Q. Did he have a cane in each hand?

A. I think he had it in his right hand; I could not swear to that, but I think he had it in his right hand.

Q. Did he use his left hand for the purpose of holding on to any railing or wall, or anything to support him?

A. I didn't notice.

Q. You didn't notice it?

A. He walked into the room—put his hand on the foot of the bed—he called his wife, I suppose he wanted her as a witness, and then sat down.

Q. What did he have on?

A. Well, he was dressed. He had on his clothes.

Q. Did it appear as though he was in a lounging suit or raining suit, or what?

A. I think he was in a suit that an ordinary man would wear in the house; I don't remember whether he

had his coat on or not. I would not swear to that, but I am under the impression he did, but I would not swear to it.

Q. What time of day was it?

A. We left—it was about two o'clock, very near two—I presume it was a minute or two after two, because the two o'clock boat, after we came down the hill, was pulling away from the wharf, we got in there at quarter of two.

Q. You say he used a cane?

A. He had it in his hand, and I think he used it.

Q. Did he walk lame?

A. I did not notice any limp; I wasn't looking for it and I didn't notice.

Q. Did he appear to walk as if he was crippled?

A. Well, a man that is crippled, generally I notice, if he is crippled to any great extent—there might be something the matter, but I didn't notice it and I would not testify that there was not something the matter with him.

Q. Did his face look or indicate that he had been out of doors working?

A. Nothing unusual I noticed about his face.

Q. Nothing unusual? A. No, sir.

Q. Don't you know that he is not able to get up or sit down without some assistance, such as taking hold of the back of a chair and letting himself down with his arms?

A. I did not see him get up out of the chair. He got up and came to me I think, in the front room, as soon as I knocked.

Q. You saw him sit down?

A. I saw him sit down on the edge of the bed.

Q. By taking hold of the end of it?

A. I don't think so; possibly he used his cane; I don't know that I was looking at him when he sat down, but when I came in I was talking with his wife in regard to the witness fees.

Redirect Examination.

Q. (By Mr. JUREY.) You say that you saw him get up and come toward you?

A. No, sir, I didn't see him get up. I say that after I rapped it was just a few seconds until the window curtains parted. I don't know whether he parted them or not, but somebody opened the window curtains—I could not see his face, but then he came to the door afterward, and she was in the kitchen when he called her.

Q. (By Mr. MARTIN.) When did you say you served that subpoena?

A. About two o'clock; it was not very far from two o'clock.

Q. On what day? A. It is dated there.

Q. What day? A. On the 11th day of June.

Q. That is to-day, you served it about two o'clock?

A. About two o'clock.

Q. You knew, as a matter of fact, before you went that *she* was in a condition that would prevent him from coming to court?

A. As a matter of fact, I didn't know anything about the case.

Q. You had that knowledge, didn't you?

A. I did not; I am a perfect stranger—Mr. Stringer, the deputy marshal, handed the writ to me in the office, and I went down to the boat.

Q. You didn't know anything about it?

A. No, sir.

Q. Your office issued the subpoena?

A. Yes, sir, the deputy marshal had the subpoena.

Q. (By Mr. JUREY.) Do you identify that as the original subpoena which you served on Mr. Newman, which you have referred to in your testimony?

A. I do. I served him with it; I don't know whether you would call it an exact copy, but it was an exact—it read exactly like this.

Mr. JUREY.—I offer in evidence this subpoena as Appellant's Exhibit "A."

Mr. MARTIN.—Objected to as irrelevant, immaterial and incompetent.

(Testimony of witness closed.)

NEAL MURPHY, produced as a witness in behalf of the appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. Neal Murphy.

Q. Where do you reside, Mr. Murphy?

A. 215 Madison street, Seattle.

Q. What is your business?

A. Contractor—railroad contractor.

Q. Where were you working during the month of March, 1900?

A. At West Seattle. I was constructing the West Seattle street car line for the Green River Construction Company.

Q. You had a great many men working under you?

A. In three months possibly a couple of hundred.

Q. Did you have a man working for you at West Seattle by the name of Newman? A. Yes, sir.

Q. What name did he give you, what initial?

A. Well, my time-book—I never took down more than one of a man's initials, merely to identify him, and I forget what initials he did give me. I know he gave me his name as H. Newman, only one initial, I believe.

Q. What time did this man, H. Newman, work for you?

A. My time-book is down at the office, but you asked me to look at my time-book and remember the circumstance, and I remember it was he went to work for me on the 13th of March.

Q. Between what dates did he work for you?

A. From the 13th to the 19th, inclusive.

Q. In what capacity did he work?

A. Laborer.

Q. What kind of labor was he performing?

A. Shoveling sand on the grade and running a wheel barrow; anything that he was called on to do, ordinary labor.

Q. During the time that this man Newman was working for you, did you have any conversation with him as to the character of work that he was performing, and did he make any objection to performing any particular kind of work?

Mr. MARTIN.—Objected to unless some connection is shown between the appellee and the person whom they are now trying to bring here under a shadow, and I

move to strike out all the testimony as irrelevant, immaterial, and incompetent, and in no way connected with the appellee in this case.

Mr. JUREY.—We will make the proper connection later on by other witnesses?

A. It don't make any difference to me one way or the other.

Q. During the time that this man Newman was work-in for you, did you have any conversation with him as to the character of work he was performing, and did he make any objection to performing any particular kind of work?

Mr. MARTIN.—We make the same objection, and I insist that if counsel intends to show that the appellee was working for this man that he should identify the man as the appellee, and then go ahead with his other examination, but that is something that the counsel can't do.

(Question repeated.)

A. Yes, sir, he did.

Q. What conversation did you have with him relative to that subject?

A. I had a load of planks shipped over from the Stetson-Post—

Mr. MARTIN.—We make the same objection and insist that if counsel can identify this man with the appellee that he should do so now.

Mr. JUREY.—We will show the identity of this man Newman and the libelant later on. Proceed.

A. I had a load of plank unloaded for the Novelty Mill for the purpose of building culverts, and sent my

men down on the work to get the planks out, and a man named Newman came to me, and he said, "I am not able to go under the planks; they are too heavy, and I am not well"; and I said, "All right, you go back on the work and go on shoveling up."

Q. What time did this man Newman quit your work?

Mr. MARTIN.—We make the same objection and move to strike out the testimony of the witness so far.

A. On the night of the 19th at quitting time he asked me to give him his time, and I said I would give it to him the next morning, the 19th of March, on the evening of March 19th.

Q. Did you have any conversation with him at that time relative to why he was quitting?

A. He told me why he was quitting.

Mr. MARTIN.—We make the same objection to that, as irrelevant, and immaterial.

Q. State what conversation you had.

A. The man was nothing to me any more than any laborer, and he said to me, "Murphy, I am going to quit you this evening and I would like to get my time"; he said, "I have got a suit for damages," \$15,000 he told me, against a company, what company I don't remember, because I didn't pay much attention to it, "And they have sent for me to come to Seattle to-morrow for settlement." And I said, "All right, Newman, I will give you your time in the morning."

Q. What amount did he say the suit was for?

A. \$15,000 he told me.

Q. What kind of a hand did this man Newman make?

A. What do you mean?

Q. Was he able to perform a full day's work?

A. Well, he got right along with the work; I didn't find any objection to his work at all; I thought probably when he said he could not pick the planks up as he was not well enough—I had a lot of men, and I said, "All right, go back on the work." I didn't discharge him when he came to me and asked for his time.

Q. He worked right along with the other men?

A. He worked right along running a wheel barrow and shoveling sand and using an ax to get out the roots.

Q. Where did you next see this man Newman?

A. Well, I tell you right now that I am a consummate ass to have anything to do with this case—I might have got rid of these things—I didn't like to be mixed up in this thing at all.

Mr. MARTIN.—I object to this, as this is simply a put up affair evidently between the witness and the attorney and the detective who is working this dirty business up.

Q. (By Mr. JUREY.) Where did you next see this man Newman? A. I saw him at his house.

Mr. MARTIN.—I would like the record to show the actions of the witness before the court here.

Mr. JUREY.—Yes, and also that the counsel is egging him on for the purpose of putting him out of humor. This is simply a straight question and the record simply shows my question to the witness.

Mr. MARTIN.—Yes, and I propose to show the actions of the witness also.

Q. (By Mr. JUREY.) You saw him at his house, Mr. Murphy? A. Yes, sir, I did.

Q. Where? A. Up there on the hill.

Q. On the hill where? A. West Seattle.

Q. How did you happen to see him at his house?

A. That young man sitting there (pointing) came over one day and asked me—

Q. What young man do you mean?

A. This man sitting here.

Q. What is his name?

A. I don't know his name.

Q. You are referring to Mr. M. D. Harben who has already testified in this case? A. Yes.

Q. Proceed.

A. He asked me if I knew a man named Newman, if there was such a man working for me, and I said I didn't know; and he asked me as a favor if I would ascertain whether such a man was in my employ, and I had my time-book in my pocket, and I said, "Yes, there is an H. Newman working for me." And he asked if I could identify the man if I saw him, and I told him, "Yes, certainly"; and at his request I went up to Newman's house, and Mr. Newman was behind the house breaking a box with a hammer—I saw him behind the house.

Q. Proceed.

A. He was breaking up a small box for kindling wood, I suppose—I don't know—and I went to the side door of the house and knocked at the door, and a lady came out with a baby in her arms, and I asked if I could see Mr. Newman—Mr. Newman had gone around the other side of the building, and as I went to the side door he dropped his hammer and went around the other side of the house, and I asked this lady if I could see Mr. Newman, and she said wait a moment and she would

see; and I stood there on the porch for a minute, or a minute and a half, and she said, "Yes, you can see Mr. Newman"; and then I went into the house and met the gentleman. It was nothing to me.

Q. And he was the same man Newman that did work for you on the grade? A. Yes, sir.

Q. Can you describe more particularly where this man Newman lives?

A. Well, I didn't know where he lived, but I left my work to do this gentleman a favor. He asked me and I went up on the hill and inquired, and I went to a grocery store—

Q. Whom did you inquire for?

A. If they could tell me where Mr. Newman lived, and the man keeping the grocery store said, "I think I can show you his house." And he took me out and walked a block and a half and met a little girl, and he asked her which of two certain houses Mr. Newman lived in, and she showed me the house he lived in, and so I went over there.

Q. Can you describe more particularly where this house is located?

A. Well, it is up on the hill in West Seattle; I don't know the streets. I was very seldom off my work; in fact, I was never up there on the hill more than twice or three times.

Q. Is it a little brown house just back of the old pavilion?

A. Well, I could take you right to the house.

Q. Do you recollect?

A. I think the building is about a three or four room house, it has a porch on the side and a porch in

front of it, and I noticed that some children had taken some chalk and did some drawing or figures on the front of the building. I didn't pay much attention to it. I could go there and find it.

Q. Do you recollect the color of the house?

A. Yes, sir, it was painted kind of dark yellow, I think it was; I am pretty near certain it was.

Q. How far from the old pavilion?

A. I don't know that I could locate the old pavilion, I don't think.

Q. You say it is on the top of the hill in West Seattle?

A. Yes, sir. About two blocks behind Brown's Grocery store, this way.

Q. Which direction, north or south?

A. As you go from the top of the hill down toward the water front.

Q. From Brown's Grocery Store?

A. Yes, sir. I didn't even know Mr. Brown. I went in there as a stranger to him.

Q. You inquired at the grocery store as to the whereabouts of Mr. Newman's house?

A. If he knew a man named Newman and where he lived.

Q. Did you ask for any initials? A. No, sir.

Q. Did he tell you there was more than one Newman in the neighborhood?

A. No, sir; he just came out with me and walked down a block with me and asked a little girl that we met where Mr. Newman's house was, and the little girl pointed it out to me.

Q. I will show you this time check and ask you to examine it and ask you if you ever saw it?

A. Yes, sir, it is one of my time checks that I showed you a great many of them.

Q. I will ask you if that is the time-check which you issued to this man Newman who worked for you on the grade?

A. Yes, sir, my stub-book will show the same thing and also the pay-roll.

Q. This is a certificate?

A. Yes, that is the check I gave to Mr. Newman.

Q. Is that your handwriting, all except the signature of Newman?

A. Yes, sir, that is one of my time-checks.

Q. Did Mr. Newman sign his name on the end of the check in your presence?

A. Yes, sir, every man does.

Q. Mr. Murphy, do you require your men working for you on that work to board at any particular place?

A. Yes, sir, there was a boarding-house over there.

Q. And do you require your men to board at the boarding-house?

A. I don't want to keep two or three boarding-houses, and I pick out one place over there run by Mr. Wells as a hotel, and he agreed to board the men for \$4.50 a week, and that was the best I could do over there.

Q. And you require all your men working for you to board at that place?

A. Yes, sir, Mr. Wells went out and bought a new stove and hired a cook.

Cross-Examination.

Q. (By Mr. MARTIN.) Now, where is this house where you say this man Newman was at which you went to see?

A. The house he was living in with his wife and baby?

Q. Anybody else living in the house?

A. I don't know. I was never there only for about five minutes.

Q. Did you see anybody else there?

A. No, sir.

Q. Which way would you go to go to the house?

A. Well, suppose a man was upon my work where I started from, to go to his house he would just strike across the hill to the main road to Mr. Brown's Grocery Store.

Q. Is Brown's grocery store on the top of the hill?

A. Right slap on the top of the hill.

Q. How far from the pavilion?

A. I don't know where the pavilion is.

Q. How far from the end of the street-car line?

A. There is not any street-car line running.

Q. You know where the track is?

A. I know where the track ends. I guess probably—the track begins down in front of the grocery store.

Q. I asked you how far his store is from the end of the street-car line. A. From which end?

Q. The end up toward the power-house.

A. I don't know. I couldn't say. I never measured it. I would like to say that my work was so located that I had no business up there on the hill.

Q. We don't care about your work at all—how far is Mr. Brown's grocery store from the power-house to the end of the street-car; the old cable-car line in West Seattle? A. I don't know.

Q. You don't know? A. No.

Q. Do you know where the end of the street-car line is? A. The old street-car line?

Q. Yes. A. No, sir, I was never to it.

Q. You know where it is, don't you?

A. I know the general run of the road up the hill.

Q. You know where the power-house was that generated the power for the cable-line?

A. No, sir, I was never at it in my life.

Q. You know where the pavilion is?

A. No, sir, I don't. I don't think I could go to the pavilion.

Q. Didn't you say it was about two blocks from the pavilion, in your direct examination?

A. In this manner I did—I had a general idea of where this old building was, because I tried to rent it for a bunk-house for my men.

Q. Which way did you go from the time you met Mr. Harben to go up to Newman's house, where were you when you met him?

A. I was down in the front of the ferry.

Q. Which way did you go?

A. I went up to my work and looked over my time-book.

Q. Where is your work from the ferry?

A. It is about four hundred yards below the ferry, near the Novelty Mill.

Q. Which way as you passed the hill, to the left or right?

A. If you give me an opportunity to stand up a minute and look out the window I can tell you. The Novelty Mills you mean—to the right of the Novelty Mills?

Q. The Novelty Mills is to the west of the ferry going over? A. Yes, sir.

Q. Then your men were over to the left?

A. Yes, sir.

Q. Then where did you go?

A. I went from there up the hill over the grade and struck across in that direction to Mr. Brown's.

Q. In which direction?

A. Off in that shape, I don't know the points of the compass.

Q. Was Mr. Harben with you? A. No, sir.

Q. Where did he go?

A. He stayed around the ferry. He asked me if I knew where he could find a man by the name of Furst, who had been working for me and lived over there.

Q. Living over where? A. West Seattle.

Q. Whereabouts did he live in West Seattle?

A. I don't know.

Q. What is the man's name? A. Furst.

Q. How do you spell it?

A. Frank Furst. I talked with him Saturday; I met him in town.

Q. He lives over in West Seattle?

A. He lived over there.

Q. And worked there at the time when you say Mr. Newman worked there?

A. Yes, sir, he was working there at the same time.

Q. Now, which way, going from the ferry, would you go to this house which you say you went to?

A. Well, I left the ferry boat and go right up the hill and turn to the right, and when you get on the top of the hill you turn this way, and then Brown's Grocery Store is on the main road.

Q. You go to Brown's Grocery Store, do you?

A. I was there only once in my life.

Q. That was the direct road? A. Yes, sir.

Q. How long have you been over there in West Seattle?

A. I started up to do that work some time about the 15th of March, and quit and wound up my work and came to Seattle with my men last week.

Q. You started in on the 15th of March and quit last week? A. Yes, sir.

Q. Did you board over there?

A. Part of the time, not often. I used to come over here every night.

Q. And during the rest of the time you were over there all the time? A. No, sir, not all the time.

Q. Most of the time?

A. I was over there every day more or less. I had my foreman looking after my work there.

Q. West Seattle is a very small place?

A. Well, it is not a very large place.

Q. Not many houses over there, are there?

A. I don't really know.

Q. You don't know?

A. No, sir. I was never to the top of the hill but once in my life off my work, and that was on this occasion.

Q. This detective Harben was there to see you several times concerning this matter?

A. He has been over there to West Seattle asking me for some information.

Q. Do you know whether or not there was a man put on your work by the name of Newman by this detective?

A. Well, no more so than every other man I had might have been put there by him. I could not say anything about that part of it.

Q. Have you any reason to believe that he did do so?

A. None in the world.

Q. Has he not approached you several times to testify in this case?

A. Well, he said he would like to get my time-book. I got my time-book and I told him I did not want to be dragged into it.

Q. Didn't he have a conversation with you at the boarding-house at one time wherein he wanted you to testify that this Newman the injured man had worked for you? A. He asked me if that was the man.

Q. And didn't you have a talk with him and with the lady that kept the boarding-house wherein he wanted her to testify that he had boarded there? A. No.

Q. Not at all? A. No.

Q. What, if anything, has he offered you or paid you for coming here to testify?

A. My dear sir, not a thing on God's green earth.

Q. Not a cent? A. No, sir.

Q. Not a dollar? A. No, sir.

Q. Do you expect any remuneration from him of any nature or kind?

A. No, sir. I am going up north in six or eight days, and I did my best to keep from being driven into this thing here, and the only reason I came here was—

Q. How did he come to go to you and ask you for your books?

A. I met him. He came over there and I didn't know whom he was or what capacity he was working in, and he spoke to me, spoke to me pleasantly, and I treat every one like a gentleman, which I am sorry to say that you are not.

Q. Never mind, you are testifying in this case.

A. (Continuing.) And he asked me if I had a man named Newman working for me, and I told him that I didn't know, that I had my time-book in my pocket and I would look at it, and I pulled the book out and showed him the name.

Q. What kind of a looking man was the Newman that worked for you?

A. Just the same looking man that he was the last time I saw him, only a good deal whiter.

Q. You can remember all of the three or four hundred men that worked for you?

A. I can remember his case in particular for the reason that he told me he could not carry that lumber up.

Q. You can remember the description of the men that worked for you? A. Yes, sir.

Q. But they come and go every day?

A. They do come and go every day.

Q. And during all this period that you worked there, you can remember the description of each man?

A. No.

Q. You have a recollection of each man that works for you?

A. I meet them on the street by the dozens every day that I go out on the streets of Seattle.

Q. But you have a great many strangers working for you?

A. At the time I was doing this work at no one time did I have more than twenty men on the work.

Q. Did you have other men on the work from West Seattle? A. Yes, sir.

Q. Whom did you have?

A. Antone Nicholle, a fisherman, and Mr. Hogan, a married man who has a family there. Nicholle lived on a scow and Hogan has a wife and daughter living over there somewhere.

Q. Who else?

A. I think that is all the men that I remember of just now.

Q. You mentioned another name a moment ago.

A. I can pick them out on my time-book. My time-book is down at the Green River Construction Company's office.

Q. That is Mr. Leary's office?

A. Yes, sir. There were three men working for me who lived at West Seattle at the time these men were doing the work.

Q. And those are two of them? A. Yes, sir.

Q. Who was the other?

A. The German, I can't recall his name, but I can pick them out on the time-book.

Q. You had a man working there in the month of April by the name of Newman?

A. No, I don't think he worked for me in April—it was in March when I first started up my work.

Q. Was there any one else worked for you by the name of Newman? A. No, sir.

Q. Just the one Newman? A. Just the one.

Q. And during that time you didn't have any other man work for you by the name of Newman than the one that you refer to?

A. I never had but the one man by that name on the work.

Q. You were working there in April, were you?

A. Yes, sir, the time-book shows everything and the name of every man that was on the work.

Q. And it also shows the month? A. Yes, sir.

Q. And the entries in this book are correct, are they?

A. Supposed to be, yes, sir.

Q. Did you ever change any of the entries in this book since?

A. I merely transferred the names of the men from one part of the book to another, because the book would get dirty and I would not have room enough to get in their names, and I made a transfer there a couple of times, I think. Newman's name and other names would appear there more than once, but that was merely because I transferred the names to another sheet.

Q. But they were for the same month?

A. Yes, sir. I can explain it all to you, if you will let me. Mr. Newman has nothing in the world against me, and if you will come with me to Mr. Newman's I will go with you.

Q. We will not only ask that you do that, but demand that you go there to the house.

A. I will certainly go with you this afternoon, if you wish.

Q. And you say that the Mr. Newman which you refer to never worked there except this one time?

A. That is all. From the—the time-book shows the name and the date and the time, and the check will show the number of days he worked.

Q. I believe you stated that he started in somewhere around the 12th.

A. I think it was previous to that time.

Q. That was when he started in?

A. No. I didn't start in until the 13th of March; my time-book will show.

Q. I am asking you from memory?

A. I don't remember just the date, but my time-book will show it.

Q. This time-book runs from December, 1899?

A. It was an old time-book that I used.

Q. It runs back to July, 1899.

A. That was the Camp Leary work.

Q. You are positive there was no man worked for you except this one man Newman? A. No, sir.

Q. What is that name there (showing); isn't that J. Newman? A. That is J. Newman, yes, sir.

Q. Eleven dollars? A. Yes, sir.

Q. The amount due? A. Yes, sir.

Q. For the month of April, 1900?

A. Yes, sir, the same man.

Q. J. Newman? A. Yes, sir.

Q. Eleven dollars? A. That's right.

Q. For the month of April?

A. Yes, sir, he did work for me in April, come to think of it.

Q. He worked in the month of April?

A. Yes, sir.

Q. To the extent of eleven dollars?

A. Yes, sir, and he worked in March.

Q. And that is the same man?

A. The same man.

Q. This book is all in your handwriting?

A. Not all of it.

Q. The months of April and March are?

A. Yes, sir, on the West Seattle work, March, April and May. One of my foremen has another time-book over there that shows Newman's name on it, too, Mr. Cox.

Q. Now, on this page you have "H. Newman" (showing) for the month of March? A. Yes, sir.

Q. Now, you have drawn a line through the "H. Newman" on the page and put it over on the next page "H. Newman"?

A. Yes, sir; because other men came on the work.

Q. You did not finish the page on which H. Newman's name appears first? A. No, sir.

Q. So that you could have continued right on down on that page, could you not?

A. Yes, sir; but there was no particular reason for it.

Q. Then in the month of April you have J. Newman?

A. Yes, sir.

Q. You paid him eleven dollars at that time?

A. Yes, sir, the stub-books will show.

Q. Now, what recollection have you about the same Newman working in the month of April?

A. He is the same man that worked for me.

Q. What recollection have you of any occurrence taking place during the month of April of this same man Newman?

A. Nothing in particular no more than any other man.

Q. This is a full list, is it? A. Yes, sir.

Q. Before you saw this book you had no recollection of Mr. Newman working for you in April at all?

A. I didn't have the book in my possession for a week or so, and I didn't recall every little circumstance that occurred on the work.

Q. What time was it that you went up to Mr. Newman's house with Mr. Harben?

A. I never went there with Mr. Harben.

Q. At his request?

A. I guess it was two weeks ago, or somewhere along there.

Q. And you are sure that is the same Newman that worked there in March and April, which you saw there?

A. Yes, sir.

Q. Do you know whether this is the same Newman that was injured on this vessel, Charles H. Newman?

A. No, sir, I don't know that.

Q. Did you know Mr. Newman at the time he got injured?

A. No, sir, I never saw the man until he asked me for work.

Q. What kind of a looking man was the man Newman that worked for you on the grade?

A. Well, he don't look much different from what he does now.

Q. Give us a description of the man that worked on the grade.

A. I guess he is a man that weighs about a hundred and fifty pounds, or in that neighborhood, and he was not as tall as I am by considerable.

Q. How tall are you?

A. Five foot ten and a half, I think, if I remember just right.

Q. How tall was this Newman which you refer to?

A. I don't think he was much over five feet or five foot two inches, something like that.

Q. Was he a dark man or light man?

A. Light complected man. If I remember right, he had a red mustache. I can't recollect exactly. You might ask me to-morrow if you had a mustache and I would have to stop to recall.

Q. Can you recall what color his eyes are?

A. No, sir. The man would have been black and blue by this time if he had talked to me the same as I have been talked to by you, I think. No, sir, I could not tell you anything of that kind.

Q. What kind of a looking woman was it that came to the door?

A. Well, I am a lover of the ladies, and she is a very nice looking woman, Mr. Martin, and she was very fleshy, stout; she is a foreigner, I think. I don't suppose she was over twenty-three or twenty-four, or something like that.

Q. Now, would you remember her complexion, whether it was dark or light?

A. Well, she was light; a blonde almost, she had a nice fat baby.

Q. Quite blonde, was she?

A. No, sir. She had a very nice white complexion—a clear complexion.

Q. How heavy was she?

A. She was a pretty stout woman; I guess she must have weighed a good deal more than her husband—I could not tell at all unless I had the lady in my arms.

Q. You did not test her weight?

A. No, sir; I might have had the inclination, but I always respect a man's wife. In fact, that is my one great failing in life is the ladies.

Q. Now, you haven't any recollection of any transaction between you and this Mr. Newman during the month of April?

A. Well, I saw Mr. Newman once coming down the hill. I don't know exactly whether it was in March or April, and he looked to me not to be in very good health at the time; he had a big heavy cane with him; I met him down near my boarding-house; he was going—I was sitting on the steps talking with a young lady and he came up the plank walk.

Q. This is the same Newman which you referred to as working with you? A. Yes, sir.

Q. You are just as positive of that as you are of anything else which you testified to?

A. Yes, sir; if I am in error and make any mistake I am sorry; I do not do it intentionally at all.

Q. Now, this book shows that Mr. Newman worked on the 4th, 5th, 7th, 8th, 9th, 10th and 11th days of April?

A. Yes, sir.

Q. And on the 16th day of April also; is that correct?

A. Yes, sir.

Q. And it shows that he started to work in the month of March on the 13th? A. Yes, sir, 12th, I think.

Q. And worked on the 14th, 15th, 16th, 17th and 19th?

A. Yes, sir, inclusive.

Q. In the month of March? A. Yes, sir.

Q. And you say he started in to work first on the bunk-house and helped you to construct that?

A. He helped to build the bunk-house.

Q. He helped to do that?

A. He and two other men. If you notice on that day there was only three went to work on that morning building the bunk-house. Three or four of them—that was the first work we did over there was to build a bunk-house.

Q. Did they leave over there, do you know?

A. I have not seen any of those men for some time. Parke, I had some trouble with him and discharged him.

Q. Where is your time check for the April work of this man Newman?

A. Down at the office. Whenever a man left work I always gave him these and he always took it to the office and got his money on it.

Q. Then he took these time checks and came to the office and got the money on it?

A. I suppose he did; if I gave him a time check that settled my business with the man except to tell him where the office is.

Q. That time check there (showing) is for the month of March? A. Yes, sir.

Q. And he would have a similar one for April?

A. Yes, sir.

Q. Do you know whether he boarded at the boarding-house in April?

A. Yes, sir, all my men had to board down there with the exception of my foreman, Mr. Cox, and this man Antone Nichols; I supposed I was boarding him, but I afterwards found out that he was boarding with an old fisherman named Charlie Mascorine on the float down there.

Redirect Examination.

Mr. JUREY.—We offer in evidence the time check identified by the witness.

Mr. MARTIN.—We object to that as irrelevant, immaterial, incompetent and no connection shown between the appellee and the person named in the time check, and it shows on its face that it is not the appellee but is some man named Newman.

(Time check received in evidence, and marked Appellant's Exhibit "B.")

Q. (By Mr. JUREY.) You say that the man at the house on the top of the hill at West Seattle, at the house that was pointed out to you as Mr. Newman's house, was the same man that worked for you on the grade in March?

A. Yes, sir.

Q. As I understand you this certificate marked "Appellant's Exhibit B" is the certificate which you gave him for the work that he performed in March?

A. Yes, sir, that is my writing in the body of the check.

Q. Less his board?

A. I gave every man two checks, one for his board check; and then the boarding-house master goes to the

office and gets it marked on the check. That is not the boarding-house check either (showing). That check was taken to the office by the boarding-house man and there is another check in the office which shows the amount of money that the paymaster paid for the actual work. I always have to keep out two checks. I make out one check which says we will say "C. H. Newman worked five days; deduction board \$8.55" and then balance due so much; and then I make him sign that check here and then when he takes it to the office they make him sign it again here, and then the check which the boarding-house man gets, I make him do the same thing, and he has to sign it in two places; and the boarding-house boss always keeps these checks, but before giving them to the boarding-house boss, I make Newman sign his, that he has received payment for this amount; because he has taken it out in board.

Q. This Appellant's Exhibit "B" is his check for the board? A. In March.

Q. That goes to the boarding-house man?

A. Yes, sir, and they are all turned into the office by the boarding-house man before he can get his money from the office.

Q. And this is payment for his board?

A. There is another check in the office stating the amount of money received for his labor, less the board.

Q. The boarding-house check, but you did not put his time on it? A. Yes, sir.

Q. Not the check that is intended for the boarding-house keeper, it just shows how much is due him?

A. Yes, sir. And the other check, a fac-simile of that,

shows how many days he worked and the total amount due for labor and the deduction for board.

Q. But the one that is intended for the boarding-house keeper doesn't show how many days he worked?

A. No, sir, but there is another check in the office.

Q. What was the boarding-house keeper's name?

A. Len Wells. It is the only hotel over there.

Q. (By Mr. JUREY.) Mr. Murphy, this certificate marked "Appellant's Exhibit B," then, represents that part of his labor that goes for board?

A. Yes, sir. That is the boarding-house boss' order for his money for the board during the time this man boarded there.

Q. This represents \$8.55 taken out of his labor and charged up to board?

A. Yes, sir, taken out of his labor and charged to board. If you get my stub-books you will see there is always two stubs to every man's work.

Q. Mr. Murphy, do you think you could point out to Mr. Harben or anyone else, if they were sent with you, the house on the top of the hill which you saw this man Newman at?

A. Yes, sir, I could take you to the same house.

Q. You will do so?

A. Yes, sir, I would give a hundred dollars if I was never mixed up with the confounded thing.

Q. You will point out the house to this man Harben?

A. Yes, sir.

Q. (By Mr. MARTIN.) And I will go with you and see if he is the fellow—

A. Yes, I will go with you anytime.

Q. —that worked for you.

A. They might possibly have rung some other man like Newman to work for me.

Q. Well, you would not know the difference?

A. I don't know what kind of jobs you people put up, but such things are not probable.

Q. If a man went to work and gave you the name of H. Newman and about the same sized man as the appellee, the man that was injured, like his description, you would not know anything about it, would you?

A. I don't suppose I would know.

Q. And they may have done that and it might not have been the man Newman that was injured that was working for you at all?

A. That might be the case. I don't know where the man was injured, or how he was injured.

Q. And you never knew Newman until he worked for you?

A. No, sir, I never saw him but twice since.

Q. That is the job that I think they worked on you?

A. I would not be at all surprised.

Q. (By Mr. JUREY.) Mr. Murphy, the man that you saw on top of the hill at the house which was pointed out to you as Newman's house told you that his name was Newman?

A. He told me his name was Newman.

Q. Yes.

A. Well, I went to the house and asked if I could see Mr. Newman, and this lady says, "If you will wait a minute." And she said, "Yes, you can see Mr. Newman"; and so I went into the house.

(Testimony of witness closed.)

Further proceedings adjourned subject to notice.

Seattle, June 12, 1900.

Continuation of proceedings pursuant to adjournment.

Present William Martin, Esq., of proctors for appellee; J. S. Jurey, Esq., of proctors for appellant.

Mr. JUREY.—I desire the record to show that Mr. Newman, the appellee, failed to obey the subpoena served on him yesterday to appear here at 3:30 o'clock, although the session of the court commissioner lasted until five o'clock.

Mr. MARTIN.—I also wish to have the record show that proctor for the appellee is willing to go with the proctor for the appellant over to his house and take any testimony of his that the proctor for the appellant desires. That he is not physically in a condition to come over to Seattle. Also wish the record to show that the deputy marshal went over there shortly prior to the last moment at which he could catch the car to get to this place, for the purpose of embarrassing the man and threatening him with arrest, and other matters of that kind; and he was also informed by the appellee that he was not able to come and could not come.

NEIL MURPHY, recalled on behalf of the appellant, testified as follows:

Q. (Mr. JUREY.) Mr. Murphy, you are the same gentleman, Mr. Neil Murphy, who testified in this case yesterday? A. Yes, sir.

Q. On yesterday I asked you if you were willing to go to West Seattle with myself and someone else and point out the residence or the house in which you say you saw Mr. Newman, the appellee, about three weeks ago?

A. Yes, sir.

Q. Did you go? A. I did.

Q. I will ask you to state to the commissioner what took place?

A. I went over this morning in company with Mr. Martin, Mr. Jurey and this gentleman here (pointing) and went up to Mr. Brown's grocery store. Mr. Brown was the gentleman that I asked some time ago to show me where Mr. Newman lived. Mr. Brown was not at home but I had my bearings from his store, and knew from there where to find Mr. Newman's house. I went down to Mr. Newman's house in company with this gentleman and some of these ladies I think were called by Mr. Martin, and we remained outside for a short time, and then Mr. Martin—

Q. I will ask you if you identified the house?

A. Yes, sir.

Q. As the house where you saw Mr. Newman some two or three weeks ago?

A. I really do not know how long ago, but somewhere about that time. We went into the house and Mr. Newman was lying on the lounge.

Q. Did you recognize Mr. Newman?

A. Yes, sir.

Q. This gentleman with whom you had conversed some two or three weeks ago, and testified on yesterday about it. A. Yes, sir.

Q. Did you identify him as the same Newman who worked on your grade in March?

A. There is hardly a shadow of doubt in my mind as to the man, but of course I am not infallible; but still, to my personal knowledge, I believe and I am firmly satisfied it is the same man who worked for me between the

13th and the 19th of March. Assisted me in building a bunk-house, that is, in putting the bunks into the bunk-house down on the waterfront for my men. I would not want to injure the man in any way—

Mr. MARTIN.—Never mind that.

Q. Mr. Murphy, while you were standing on the outside of the house waiting to see Mr. Newman in the presence of Mr. Harben, Mr. Kelly, Mr. Martin and others, did Mr. Martin make any statement relative to the identification of Mr. Newman, if you remember?

A. You mean in regard to what Mr. Martin said?

Q. Yes.

A. Well, I did not hear all he said. I did not pay particular attention to it.

Q. To bring you to the point: do you recollect one Mr. Goldie?

A. I think this gentleman here came down and Mr. Martin said something to him about someone saying that Mr. Newman had been working on the grade, and I think Mr. Martin said he knew different, that he never worked on that grade or something to that effect; and said something about wanting to get some witnesses to come over to town this afternoon, and he would fix all of us. I think that was the language.

Q. "Fix all of us" for what.

A. Honestly I could not say because I was talking to someone there and that is about all of it that I remember.

Q. Mr. Murphy, I will ask you to look at that time check or certificate?

A. Yes, sir.

Q. Did you issue that?

A. Yes, sir, that is my check.

Q. To whom was that issued?

A. To H. Newman.

Q. The Newman who worked on that grade in March?

A. Yes, sir— Let me see that date—let me see if it is dated in March. (Witness examines paper.) Yes, this is March of this year.

Q. Do you recollect whether the certificate that was presented to you yesterday marked Appellant's Exhibit "B"?

A. You mean the check similar to this?

Q. Yes? A. Yes, sir.

Q. I will ask you if that represents the balance of the wages due Mr. Newman for this work on this grade?

A. Yes, sir.

Q. This is the check here?

A. Yes, sir. This is a boarding check.

Q. Does that represent his labor and the extent of his board? A. It represents his board, \$4.50.

Q. You testified yesterday that the certificate that you put in evidence represented the board. After examining this do you desire to make any correction in that regard?

A. Well, when I pay off a man I make out two checks, one represents the labor and also shows the deduction for board on it, and I give that man that check and he takes it to the office and gets his money, less his board. That check refers merely to the board account and that he signs and it goes to the landlord, and the landlord brings the check over to the Green River Construction Company's paymaster and he settles the board bill.

Q. Then, this certificate represents the board?

A. Yes, sir, this is a board bill for \$4.50.

Q. The other certificate represents what?

A. Labor.

Q. Instead of board as you testified the other day?

A. It should be labor, I did not notice the two checks.

One is a board bill, it states it on the check.

Q. Is this certificate in your handwriting?

A. Yes, sir.

Mr. JUREY.—I offer this certificate in evidence.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and tending to cumber the record and for the reason that there has been no connection shown to the appellee in this case whatever.

(Paper received and marked Appellant's Exhibit "C," filed and returned herewith.)

Q. Look at this certificate for labor in April. (Witness examines paper.) Did you issue that certificate?

A. Yes, sir.

Q. What does that represent, Mr. Murphy?

A. That certifies that J. Newman—

Mr. MARTIN.—Never mind what it certifies.

A. (Continuing). It is a check for \$11 for 5 1-2 days' labor at \$2 a day less \$4.

Mr. MARTIN.—I object to the reading of the check. It is the best evidence itself.

Q. State what it is?

A. It is a check for \$6.28 for labor performed.

Q. By whom?

A. By J. Newman on the West Seattle street-car line in West Seattle, April 11th, signed by him.

Q. Was that signed in your presence?

A. Yes, everyone signs these checks in my presence.

Q. You saw John Newman sign that certificate on the end of the check? A. Yes, assuredly.

Q. The other is signed before the paymaster?

A. Before the paymaster in the office.

Q. Who is J. Newman?

A. He was the man who was on my work as my time-book shows during that month. In the month of April my foreman had charge of my work. I was busy, it was during the most part of the month in looking after the work between here and Tacoma, on the Seattle & Tacoma Electric power line, and also engaged—

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and move to strike the answer as cumbering the record.

Q. You were also engaged in looking after work for the West Seattle Land & Improvement Company?

A. Yes, and my foreman had charge of my work during that month. He hired and discharged the men during that time. Sometimes he would send men to me with a slip of paper with their names on it.

Q. You mean to say that you did not have strict personal supervision of that work?

A. No, not after about the end of March until about the winding up of my work.

Q. Did more than one man named Newman work for you on the grade, to the best of your knowledge?

A. No, sir, not to my knowledge.

Mr. MARTIN.—That was gone over yesterday, and he testified before that this was the same Newman that

worked both in April and in March, he swore to it positively.

Q. Now, to the best of your knowledge—

Mr. MARTIN.—I object to the form of the question and object to an answer. We want to know whether he knows or whether he does not know. That is what we went over for and that is why I demand that the witness confront the appellee, to state whether or not he was the man that worked, and he said that he could tell, and I want to know whether he says he is the same man or not.

Q. Mr. Murphy; to the best of your knowledge—

Mr. MARTIN.—We object to the form of the question, as an equivocation of the proposition, and an attempt to evade answering the true question.

Q. The man Newman named in this certificate who worked on that grade in April was the same man who worked on that grade in April, the same man who worked on that grade in March by the name of H. Newman?

A. I am satisfied beyond doubt that he is the same man.

Q. The same man that you recognized to-day over at West Seattle as Charles H. Newman?

A. The man that I saw in that house this morning that I spoke to was undoubtedly the man who worked—

Q. In March? A. In March, yes.

Q. And in April?

A. In April I would not swear to that positively because, as I tell you, my foreman had charge of my work in April, but I never knew but the one Newman on that work.

Mr. JUREY.—I offer this certificate in evidence.

Mr. MARTIN.—We object as incompetent, irrelevant and immaterial.

(Paper received and marked Appellant's Exhibit "D," filed and returned herewith.)

Q. You may look at this certificate, Mr. Murphy, did you issue that certificate? A. Yes, sir.

Q. What does it represent?

A. J. Newman was in my employ at West Seattle 5½ days in the month of April.

Q. This is a time check for his labor during the month?

A. For his labor, with his board deducted, \$4.62, also signed by Wells, the hotel manager over there.

Q. In what capacity did this man Newman work?

A. As a laborer.

Q. What is the character of labor that he performed?

A. Running a wheelbarrow and shoveling sand and using an ax.

Q. I will ask you to look at the signature on the end of that certificate? A. I see it.

Q. Was that signature made in your presence?

A. Yes, sir.

Mr. JUREY.—We offer this time check in evidence for the work in April.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial.

(Paper received, marked Appellant's Exhibit "E," filed and returned herewith.)

Q. All these certificates are in your handwriting?

A. Yes, sir. All of them. No man was on the work that got a check without my being there.

Cross-Examination.

Q. Mr. MARTIN.) You say you saw Mr. Newman sign that check?

A. Yes, sir; every man whose name is on these checks are signed—

Q. On this one marked exhibit "B"?

A. Yes, sir, that is my check all right.

Q. Did you see Charles H. Newman, the gentleman who I introduced you to in his house at West Seattle to-day sign that name on that check?

A. Yes, sir; no other man could possibly have signed it.

Q. You saw him sign his name on that check?

A. I saw him sign his name to that check.

Q. Exhibit "D"? A. Yes, sir.

Q. Where were you when he signed that?

A. On my work.

Q. Whereabouts?

A. Out on that hill; I do not know the particular spot.

Q. When?

A. On the grade where the men were employed.

Q. You say he also signed where he received payment, do you? A. Yes, sir.

Q. Both of these signatures?

A. He signed both of these signatures.

Q. To exhibit "D"? A. Yes, sir.

Q. You are positive about that?

A. Certainly I am.

Q. And the same man you saw there to-day, Charles H. Newman?

A. Yes, sir, to the best of my knowledge and belief.

Q. You say you saw him sign that check?

A. Yes, sir.

Q. Was it or was it not him?

A. It was him.

Q. That is the way to answer. And you swear to that on your oath? A. Yes, sir, I do.

Q. You saw him sign, did you, exhibit "E"?

A. That check was signed by Mr. Newman in the presence of Mr. Wells and myself.

Q. By this same Charles H. Newman?

A. Yes, sir, at the hotel.

Q. Whereabouts in the hotel?

A. At the counter where Mr. Wells keeps the books upon and the ink.

Q. Did you get this certificate there?

A. Yes, sir, Mr. Wells signed that himself at the hotel.

Q. Where did you get this blank that this was made on, did you have it at the hotel there?

A. No, sir, I carry a book in my pocket all the time in connection with the time-book, my check-book.

Q. Charles H. Newman signed that in the presence of Mr. Wells?

A. Yes, sir, he went down to see what the board bill was; Mr. Wells would recognize his own signature.

Q. This is Appellant's Exhibit "E." These were made out on the dates they purport to be?

A. Yes, sir, the dates they call for. Just exactly as they read there.

Q. What business have you been engaged in?

A. Mining and railroading.

Q. What else? A. Nothing.

Q. What occupation have you followed?

A. Mining and railroading for the last twenty years.

Q. Mining and railroading?

A. I have had one or two government positions.

Q. Have you acted in the capacity of deputy United States marshal at Skagway? A. Yes, sir.

Q. For how long? A. Oh, several months.

Q. Did you ever act in the capacity of a detective?

A. No, sir, I never did.

Q. At any time? A. No, sir, never.

Q. Did you act in the capacity of deputy sheriff?

A. Yes, sir.

Q. And warden? A. Warden.

Q. You have? A. Yes.

Q. At the penitentiary? A. I did.

Q. You have followed that kind of work, have you, for some time? A. Yes.

Q. For how many years?

A. Well, I was deputy sheriff over in Idaho for possibly six or seven months under a friend of mine who was sheriff, and I was deputy warden of the penitentiary at Yuma, Arizona, for possibly nine months. Mr. Bean was our warden, and I was deputy United States marshal under Commissioner Smith at Skagway.

Q. Up at Skagway?

A. At Skagway during the trouble up there.

Q. And this is the kind of work that you have been engaged in lately?

A. Partly. I am not ashamed of it. It took considerable influence—a man had to have a good deal of backing to obtain these positions.

Q. Whereabouts were these bunks that you speak of that Newman first started to work on?

A. Almost directly opposite where you had your lunch to-day.

Q. That would be to the right of the West Seattle landing as you go over there?

A. Yes, sir, above it that way.

Q. Whereabouts?

A. Right above that big cannery, big fish cannery, almost directly opposite where you ate dinner.

Q. Over beyond the Oceanic Packing Company's warehouse? A. Yes, sir, right above the house.

Q. The Oceanic Packing Company?

A. Yes, sir.

Q. Whereabouts was the house situated with reference to this?

A. Right a little above, probably fifty feet.

Q. Newman was one of the men at work putting these bunks in? A. Yes, sir.

Q. The first time that you started in to do the work?

A. Yes, sir.

Q. This same man Newman that you speak of now?

A. Yes, sir.

Q. Charles H. Newman, the same gentleman you saw to-day? A. Yes, sir.

Q. Then you went over the grade, did you?

A. The next morning.

Q. And he was over there, was he?

A. Yes, sir.

Q. Where did you first meet Newman?

A. I met him over at West Seattle. He came applying for work.

Q. Now, when did he come to apply for work to you?

A. On the morning I started to build the bunk-house. I took two men from Seattle to West Seattle, and he came down this morning when we started in.

Q. You never saw him before? A. No, sir.

Q. He did not know you and you did not know him?

A. I do not think that he did.

Q. Where were you when he first spoke to you?

A. The two men were carrying lumber that I had purchased from the superintendent of the Robinson Raft Company, they were hauling lumber up from the company's yard to the bunk-house.

Q. He wanted a job to help pack lumber?

A. He wanted employment.

Q. In other words he was standing there waiting when you got over there that morning to go to work for you?

A. I do not know that he was standing there waiting.

Q. What time did you go to work?

A. We worked eight hours that day.

Q. What time did you go to work?

A. We worked ten hours a day, I think it was.

Q. I want to know what time you went to work.

A. I could not tell to the minute. My time-book shows my men put in eight hours that day. My men put in eight hours that day, you have got the time-book in your pocket.

Q. What day did you say you started in?

A. Either the 12th or the 13th. You have my time-book, Mr. Martin, in your pocket, have you not?

Q. You say these men worked right along on your grade, this same Newman, you say, was there?

A. Yes, sir.

Q. Wheeling a wheelbarrow?

A. Yes, sir, wheeling a wheelbarrow and shoveling sand.

Q. What would he be hauling in that wheelbarrow?

A. Sand.

Q. Loaded full would it be?

A. Yes, sir.

Q. How heavy would that be?

A. It would depend altogether on how he loaded it, I do not weigh the wheelbarrows.

Q. How much would it weigh?

A. 125 or 120 pounds.

Q. Quite heavy?

A. No, A wheelbarrow, I do not think that I ever ran one or I would know more about it.

Q. He was shoveling right along?

A. Yes, sir.

Q. Using an ax and cutting and grubbing?

A. Yes, sir, some roots.

Q. How much did you pay him a day?

A. \$2.

Q. How much per day did he pay for board out of that? A. \$4.50 a week.

Q. You say that he boarded down at Wells' during the time that he was working for you?

A. During the months of March and April.

Q. Did he have a bed there, a bunk?

A. I suppose he slept in the bunk-house, that I do not know. I did not keep so close track of the men at all.

Q. You had a bunk-house for him?

A. I had a bunk-house for all the men.

Q. They were all supposed to sleep there?

A. There were some of my men did not sleep there.

Mr. Hogan worked for me in March and he did not sleep there. He boarded at home.

Q. But these you charged up board to did board there? A. Yes, sir.

Q. And slept there?

A. Yes, sir, supposed to.

Redirect Examination.

Q. (Mr. JUREY.) Mr. Murphy, do I understand you to say that one of these exhibits "C" or "D" that you saw Newman sign under the words "Received payment"?

A. All these signatures were made in my presence. I required the men to sign every check.

Q. I mean under the words "Received payment"?

A. Yes, that was signed at Mr. Wells' boarding-house.

Mr. MARTIN.—That is exhibit "D," is it not?

Mr. JUREY.—I think so.

Mr. MARTIN.—I object to this; it has all been gone ing his own witness and coaching him in any such manner.

Q. Do you mean to say that you saw him sign both of these signatures?

A. Certainly, all of these signatures attached to all of these checks.

Q. You mean both signatures on each check?

A. Yes, sir, they were all signed in my presence.

Q. You have a great many men working for you on that grade, do you not?

A. Yes, sir, I have a good many.

Mr. MARTIN.—I object to this; it has all been gone over before.

Q. Do you always get the correct name?

A. Well, Mr. Butler can explain that probably to the satisfaction of Mr. Martin, that I could not always.

Q. Have you any explanation of that; if you have you may state it.

A. I will say this; in several cases we did not always get the first name right or the initials right, sometimes would get his name wrong, for instance my pay-roll and my time checks in the office will show the case of Mr. Coleman, whose name was Corrigan.

Mr. MARTIN.—I object as incompetent, irrelevant, and immaterial.

A. (Continuing.) I got his name wrong and he signed the check and I did not want to tear up the time check and I got him to sign the same name that I had originally written in the time check. Any man on public work will tell you these things are of common occurrence. Sometimes we do not get the initials right, and sometimes we do not get the spelling of the name right.

Q. Was it your custom where you got the man's name wrong or the initials wrong, to make him sign the time-check or name which you had on your books?

A. Certainly; if I had a man named John Jones and he signed Tom Jones, the paymaster would have to have that signature.

Q. Mr. Murphy, did you have any difficulty this morn-

ing in pointing out the house that you saw Newman in?

A. Not a particle, no, sir.

Q. Did you receive any assistance or suggestions from anybody? A. No, sir.

Q. The man that you saw at the house to-day on the hill at West Seattle, and the man that Mr. Martin introduced to you was the Newman that worked for you on the grade?

A. Undoubtedly he was the man that was on the grade working in March.

(Testimony of witness closed.)

Mr. JUREY.—I desire to have the record show and to give Mr. Martin notice here in open court that if he desires the testimony of Mr. Murphy, I will waive all formalities and permit him to take it at any time, and let him appear at any time, upon one hour's notice to take his testimony if he desires. I desire further, to have the record show that I give this notice to proctor for the appellee for the reason that Mr. Murphy is liable to go away at any time.

At this time further proceedings were adjourned until June 13, 1900, at 8 o'clock P. M.

Wednesday, June 13, 1900, 8 P. M.

Proceedings continued pursuant to adjournment.

Present: William Martin, Esq., proctor for appellee; John S. Jurey, Esq., proctor for appellants.

JAMES B. EAGLESON, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. James B. Eagleson.

Q. Where do you reside? A. Seattle.

Q. How long have you lived in Seattle?

A. Twelve years and a half.

Q. What is your profession, Doctor?

A. Physician and Surgeon.

Q. Duly and regularly licensed physician in the active practice of your profession? A. Yes, sir.

Q. How many years have you been practising your profession? A. Fifteen years.

Q. Do you recall, Doctor, sometime during the fall, and the latter part of the fall of 1899 that Mr. Metcalfe, one of the proctors for the claimant in this case of Newman against the steamship "Homer" spoke to you about a surgical examination of the libelant in this case, Charles H. Newman?

A. Yes, sir. He spoke to Dr. Ford and asked him if he would see the case and examine the case—he didn't speak to me about it at all, until sometimes afterward I met him one day and asked him—

Q. Was there any part of the testimony in this case, particularly the testimony concerning who examined or treated the libelant, shown to you?

A. Yes, sir; they gave us to read over the testimony given by Dr. Wotherspoon and Dr. Miller, I believe it was.

Q. For what purpose was it given to you?

Mr. MARTIN.—Objected to as irrelevant, immaterial, and incompetent and move to strike it all out.

A. My understanding was that we were just to read it over and get an idea of what the testimony was in the case, so that we would get some idea of the case.

Q. At the time of the examination you would be called upon to make?

A. Yes, sir. The idea was that we were to see the case and make a thorough examination and give our opinion of it.

Q. Did you ever, at any time, give any of the proctors for the claimant or anyone representing the ship any assurance that you could or would contradict the testimony of the surgeon who testified on behalf of the libellant?

A. It would be impossible for me to do that until I saw the case and examined it. I would not know whether I could do that or not.

Q. As a matter of fact, you gave no such assurance?

A. No, sir. It would be impossible to do it until I examined the case.

Mr. MARTIN.—I move to strike out all the testimony of this witness as irrelevant, immaterial, and incompetent.

(Testimony of witness closed.)

ROLLIN V. ANKENY, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name?

A. Rollin V. Ankeny.

Q. Where do you reside? A. Seattle.

Q. How long have you lived in Seattle?

A. Twelve years.

Q. What is your business? A. Banking.

Q. What bank are you connected with?

A. The Puget Sound National Bank.

Q. How long have you been engaged in the banking business? A. About eighteen years.

Q. How long have you been connected with the Puget Sound National Bank? A. Twelve years.

Q. What position do you hold in the Puget Sound National Bank? A. Cashier.

Q. How long have you held that position, Mr. Ankeny? A. About five years.

Q. Are you an expert in handwriting, in examining and determining the genuineness of signatures and handwriting?

A. Well, I have had a good deal of experience incidental to my business.

Q. In connection with your business you have a good deal to do with the examination of different handwritings and signatures, comparing them, have you?

A. I have.

Q. And determining their genuineness?

A. Yes, sir.

Q. Mr. Ankeny, are you able, from the experience you have had in your business, to examine a signature or handwriting that is known or admitted to be genuine, and by comparison of that with other signatures and handwriting to determine whether the latter are genuine or forgeries? A. I can give my opinion.

Q. You are daily engaged in such business, are you not, that is a part of your daily duties?

A. Whenever the occasion arises, yes, sir.

Q. Mr. Ankeny, I will call your attention to the original record in the case of Charles H. Newman against the steamship "Homer," in the United States

District Court for the District of Washington, Northern Division, No. 1468, and particularly to the signature "C. H. Newman" to the libel, and to the signature "U. H. Newman" to the verification of the libel, and to the signature "C. H. Newman" to the libelant's bond or stipulation for costs, and to the signature "C. H. Newman" to the amendment to the libel, and to the signature "C. H. Newman" to the verification to the amendment to the libel, and to the signature "C. H. Newman" to the verification of the replication, and to the signature "Charles H. Newman" to the verification to reply to amendment to amended answer, which are the established and admitted signatures of C. H. Newman, the libelant and appellee in this case; and I will also call your attention to Appellant's Exhibits "B," "D," and "E," and I will ask you to compare the signatures "H. Newman" on the end of exhibit "B," and under the words "Received payment" on exhibit "B," with the signatures in the record which I have called your attention to; and I will ask you whether or not you can determine whether the signature to the exhibit is the same handwriting and written by the same person as the signatures in the record.

A. I would call that the same writing.

Q. The question is could you determine from that examination? A. What do you mean?

Q. The question is whether from the examination of those original signatures and the time checks which you hold in your hand whether you can determine whether the signature "H. Newman" to the certificate is the same signature and handwriting as the signature "C. H. Newman" to the record?

A. If I understand what you want to know, is my opinion as to either of these.

Q. From the examination you have made, can you give your opinion?

A. Yes, sir, I can give my opinion.

Q. What is your opinion?

A. I consider it the same writing, the same person wrote them both.

Q. The signature "H. Newman" to the certificate which you hold, exhibit "B," you say is the same handwriting as the signature "Charles H. Newman" to the reply to the amendment to amended answer in the record?

A. Yes, sir—yes, I am satisfied as to that.

Q. Now, I will ask you to look at Appellant's Exhibit "D," which I called your attention to, and ask you if the signature "John Newman" is the same signature and handwriting as the signature "C. H. Newman" and "Charles H. Newman" in the record?

A. Yes, sir, I consider them also the same.

Q. The same signature and the same writing?

A. Yes, sir.

Q. And is the signature "John Newman" to exhibit "D" both at the end and under "Received payment" the same signature and handwriting as the signature "H. Newman" on Appellant's Exhibit "B"?

A. Yes, sir, it is all the same.

Q. Mr. Ankeny, I will call your attention to Appellant's Exhibit "E," and ask you if the signature "John Newman" on the end of the certificate is the same signature and the same handwriting as the signature

“Charles H. Newman” to the documents in the record to which I have called your attention? A. Yes, sir.

Q. Now, I will ask you if the signature “John Newman” to the end of Appellant’s Exhibit “E” is the same signature and handwriting as the signature “H. Newman” to the end and under “Received payment” on Appellant’s Exhibit “B.”

A. Just the same.

Q. Mr. Ankeny, to be specific, I will ask you if the signature “H. Newman” on Appellant’s Exhibit “B” and the signature “John Newman” on Appellant’s Exhibit “D” and the signature “John Newman” on Appellant’s Exhibit “E” is the same signature and handwriting and written by the same person as the signature “Charles H. Newman” to the reply to amendment to amended answer in the record before you? A. Yes, sir.

Cross-Examination.

Q. (By Mr. MARTIN.) What makes you think that the name under “Received payment” on exhibit “D” is the same handwriting as the name “C. H. Newman” on the libel in this case?

A. Because there is a great similarity.

Q. What similarity is there?

A. Right there (showing) it is identical, the “m” and “n” in those two cases.

Q. How would you say that the pen was held in each of those cases, in the case of the libel would you say that the position of the man was sitting, and as to the manner in which he held his pen?

A. Well, I could not say as to what position he was in when he wrote.

Q. Could you tell?

A. The appearance here is that the pen was a sharp pointed, and I would say that the pen there was rather an old pen (referring to the time check).

Q. Are they spelled the same?

A. They appear to be.

Q. How would you say that the word "Newman" under "Received payment" on exhibit "D" is spelled—spell it out as it is on exhibit "D."

A. He has kind of run his "n"—and the John and the Newman are practically one letter—I can go backwards, "n-a-m-w-e—" and that is practically one letter.

Q. Is that more of an "r" there?

A. Well, you see he has brought it up over the "w" and he was nervous, and he has sort of run it together—which shows that either he worked hard or was up late at nights, or something of that sort.

Q. In the pleadings here it looks as though he was very nervous, does it?

A. Those are a little better—there, for instance (showing); that is better here and further over you get (showing)—that is very good too, but he wrote that in an easier position evidently; over here he seemed to be quite nervous.

Q. He seemed to be quite nervous when he signed that paper? A. Yes, sir.

Q. What paper is that?

A. The amendment to the libel and also the verification.

Q. Does not the signature under "Received payment" indicate more strength and power in writing than the signature to the libel or amended libel?

A. Well, I could not answer that question.

Q. Does not the signature to the libel and amended libel and the pleadings here all the way through show a man in a rather weak, nervous condition, and doesn't it indicate that?

A. It indicates that the man may be perfectly well but very nervous sometimes, and this man evidently is not accustomed to writing, or else he is very nervous, but I would say that he is not accustomed to writing.

Q. If that man, in his ordinary condition, had a very good hand-write and that the way it appears there is because of an injury or his nervousness that causes it, what would you say that this here writing is the same (showing check to witness)?

A. Well, I could hardly judge of a man's condition by his handwriting.

Q. You say it indicated that?

A. It shows that he was nervous or incapacitated in some way.

Q. You say it indicates nervousness?

A. Yes, sir, that is as far as I would go in an opinion.

Q. Does not exhibit "D" "John Newman" show strength and power?

A. He may have had a more competent position when he wrote this—he does not appear to be in as nervous condition here as when he wrote that.

Q. Does not exhibit "D" "John Newman" show strength and power?

A. It shows poor handwriting.

Q. It does not indicate nervousness?

A. It does not appear to be nervous—the lines are more regular.

Q. That handwriting you made out to be the handwriting of a laborer, would you not, who was not skilled in handwriting?

A. I can't judge of a man's vocation by his handwriting.

Q. Now, if I were to tell you, Mr. Ankeny, that all those signatures which appear in those pleadings were written when the man was lying on his face and had to get support under his breast in order to get his arm sufficiently from the bed in order to write these, what would you say about that signature compared with this exhibit "D," where a man must have been in a standing position, a laborer who was performing work, what would you say about those signatures under those circumstances? A. What is your question?

(Question repeated.)

A. I would simply say that perhaps the nervousness in this case here was justified, but I would not give that as an opinion unless I knew the cause of the nervousness. Very often I can't write as good myself one day as another.

Q. Would it not make a difference in your opinion as to who wrote those names, whether the same person or not? A. No, sir; my opinion is given.

Q. Would those circumstances have any effect upon your opinion and the formation of your opinion?

A. They would not have any effect upon my opinion as to the person that made those signatures.

Q. You think that was the same handwriting, do you?
A. All the way through.

Q. Is the "N" the same on the word "Newman" in Appellant's Exhibit "B" as appears in the word "Newman" on the libel—the capital "N"?

A. No, sir; it is different.

Q. A different "N"? A. Yes, sir.

Q. Made altogether different? A. Yes, sir.

Q. In the name in the libel the word "H" is attached to the word "N" without withdrawing the pen?

A. Yes, sir.

Q. Is it so in exhibit "B"? A. It is not.

Q. Is not the word "Newman" on exhibit "B" spelled "N-e-u" instead of "N-e-w"? A. That is "N-e-w."

Q. What makes you think that is intended to be a "w"—there is nothing to indicate it, is there?

A. From there up he stopped; instead of going over he went up.

Q. The paper is a little rough at that point, and a little softer?

A. Well, it is wrinkled there not a little.

Q. I will ask you if the signature "Newman" appearing on these exhibits does not show poor penmanship simply? A. It shows poor penmanship.

Q. I will ask you if the signatures to all the pleadings do not show fair penmanship, with nervousness?

A. The same character of penmanship, except it appears that he had a terribly pointed pen.

(Question repeated.)

A. I would not call that fair penmanship. I would call it poor penmanship.

Q. Do you think a man standing up in the position at a counter, where he would have an opportunity of signing these checks, that his signature would be the same—take the same man, for instance, as a man lying down on his face in a crippled condition, and not able to turn around?

A. The general characteristics of his signature would be the same—the similarity—a man most always writes a little different—it is never exactly the same.

Q. But you don't think it would make any difference?

A. Not as to the general characteristics of his signatures.

Q. When were you shown those checks first?

A. This morning.

Redirect Examination.

Q. (By Mr. JUREY.) Mr. Ankeny, as I understand you, the signatures "John Newman" and "H. Newman" to the Appellant's Exhibit "B," "D," and "E" are the same handwriting and the same signatures and written by the same person as all of the signatures to the documents in the record which I have shown you?

A. Yes, sir.

(Testimony of witness closed.)

CHARLES B. FORD, called as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your name.

A. Charles B. Ford.

Q. Where do you reside?

A. Seattle, Washington.

Q. How long have you lived in Seattle?

A. Since September, 1893. I was out here in 1893 first, but this last time I have been here since September 1, 1896.

Q. What is your profession?

A. Physician and surgeon.

Q. You are in the active practice of your profession in this city? A. I am.

Q. How long have you been so engaged in Seattle?

A. In Seattle since January, 1897.

Q. Were you practicing elsewhere previous to that?

A. In Brooklyn, New York, in the hospital in Brooklyn, and also in the hospital in New York City.

Q. I will ask you, Doctor, if you recall, during the latter part of the fall of 1899, Mr. Metcalfe, of proctors for the appellant in this case, Charles Newman, appellee, against the steamship "Homer," appellant, speaking to you about conducting a surgical examination of the appellee, Charles H. Newman? A. I do, yes, sir.

Q. Will you kindly state your recollection of the conversation you had with Mr. Metcalfe?

Mr. MARTIN.—Objected to as irrelevant, immaterial, incompetent, hearsay, and I move to strike out all this testimony, and also the testimony of Dr. Eagleson, on the same grounds.

A. Gen. Metcalfe brought the papers up to that contained the examination of Drs. Miller and Wotherspoon in regard to Mr. Newman's condition, and requested me to read them, and wanted to know, if, in my opinion, a surgical examination, or an examination of Mr. Newman would throw any light upon his case, and I told him I thought it would.

Q. Doctor, did you ever assure Mr. Metcalfe, or any one else connected with this case, that you could contradict the testimony of Drs. Miller and Wotherspoon?

A. No.

Cross-Examination.

Q. (By Mr. MARTIN.) You never said anything which would lead them to believe that you would, did you, to him?

A. Well, there are some parts of that testimony—do you mean to reverse the whole decision?

A. No. Just answer my question. Did you say that to Gen. Metcalfe—did you ever, doctor, say anything to Mr. Metcalfe which would lead him to believe that you would contradict that testimony? A. No.

Q. Or to any way assure him that you would?

A. No.

Q. In case a medical examination was made?

A. No.

Q. Or to lead him to believe so in any way?

A. No.

Q. How many times did he speak to you about it?

A. Well, that would be impossible for me to answer. He brought the papers up there.

Q. You mean by the papers the testimony?

A. Yes, sir. And once or twice on the street he asked me if I had read it over; but I think I had one talk with Gen. Metcalfe in his office; one that I remember, and that is the only one that I am positive about, but I think I spoke to him on the street—he asked me—

Q. How many times did you say you had spoken to him concerning the matter?

A. Somewhere between one and ten.

(Testimony of witness closed.)

WALTER E. BUTLER, called as a witness in behalf of appellants, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. Walter E. Butler.

Q. Where do you reside, Mr. Butler?

A. Seattle.

Q. Are you connected with the Green River Construction Company? A. Yes, sir.

Q. In what capacity?

A. Auditor and treasurer.

Q. Do you know one Murphy? A. Yes, sir.

Q. Did your company have any business with Mr. Murphy relative to West Seattle?

A. Yes, sir, we had a contract with him.

Q. For doing what? A. Grading.

Q. Grading at West Seattle?

A. Grading at West Seattle.

Q. For what purpose?

A. Grading for the purpose of constructing a street car line.

Q. Are you familiar with the business transactions between your company and Mr. Murphy relative to that contract? A. Yes, sir.

Q. Were his men, working for him on that grade under that contract, paid through you as auditor of the company?

A. Paid through me as treasurer.

Q. Mr. Butler, I will ask you to look at Appellant's Exhibit "B," Appellant's Exhibits "C," "D," and "E," and state what they are, if you know.

A. They are time checks issued by Neal Murphy, certified to the amount due his men for work performed by them on his contracts with us at West Seattle, and one of them here—two of them are certified to the amount of board deducted from those men.

Q. As I understand you those certificates or time checks represent work done for Mr. Murphy under his contract, his grading contract with your company?

A. Yes, sir.

Q. And are certificates for labor performed for him under that contract?

A. Yes, sir, by the men named thereon.

Q. I will ask you if these time checks were paid by your company?

A. Yes, sir, they were all paid.

Q. Mr. Butler, I will call your attention to the fact that in two of these time checks the laborer is designated as H. Newman and in two of them as J. Newman, and I will ask you if it ever, or often occurs in such time checks that the initial of the laborer gets mixed or is incorrectly put down?

A. Not often, but sometimes it does.

Q. Has such a thing occurred, in your recollection, in Mr. Murphy's transaction and work under his contract?

A. I cannot recall to mind any specific case in Mr. Murphy's contract.

Q. In such matters where the initial—where the wrong initial is given or used, I will ask you if it is customary to perpetuate the error by requiring the man to sign his check as made out?

A. If a man calls my attention to the fact that his

initials are wrong, or his first name is wrong, I have him sign his own name to it, irrespective of what the time check calls for. If I don't know what the man's name is and it is not called to my attention about it I pay no more attention to it than to see that he signs it as the check is made out.

Cross-Examination.

Q. (By Mr. MARTIN.) Did you pay these checks, Mr. Butler?

A. Yes, sir, I paid them on behalf of the company.

Q. And when exhibit "D" was presented to you for payment where was it presented to you for payment?

A. It was presented to me for payment in the office of the company.

Q. Did the party sign that at the time you paid him?

A. He signed it in my presence; he signed the receipt in my presence—this on the end was already signed so that I could identify the man.

Q. But the name "Newman" under the words "Received payment" on exhibit "D" was signed in your presence? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Do you remember the man that signed that?

A. I don't.

Q. You could not identify him?

A. I could not.

Q. Is that true of Appellant's Exhibit "B"?

A. No, sir, this is for board, if I am not mistaken. This exhibit "D" is for the man's time that he was paid, \$6.38—that was one of the first or second checks that

were sent in that were incorrectly made out, but I paid it.

Q. And the man received payment on exhibit "B" in your office in your presence? A. Yes, sir.

Q. You don't remember what kind of a looking man he was, Mr. Butler?

A. No, sir; I have not the least idea. There are a couple of hundred of them in every month and I can't remember.

Q. These have been in your possession since the date mentioned on them?

A. Until a few days ago, when I gave them to Mr. Jurey.

Q. Could you say the date on which you paid this check marked exhibit "D"?

A. I have no other way than the date on the check, April 11.

Q. Would not the books in your office show the date at which you paid it? A. No, sir.

Q. How did you pay it, money or a check?

A. Cash, coin.

Q. And you have no way of determining from the books in the office when you paid it? A. No, sir.

Q. Is there no entry there?

A. I would make the entry on the books and carry the checks as cash on hand until the pay-roll is turned in at the end of the month and then write it off—I simply keep a memorandum of so many checks in the man's name and file the time checks and carry them up until the payroll is made out and then the total amount is written off.

Redirect Examination.

Q. (By Mr. JUREY.) Mr. Butler, these laborers' time checks for board, were they signed before they came to your office, the receipt signed before they came to your office?

A. No, sir; they were receipted by D. Murphy as the manager of the West Seattle Hotel, in my presence, and I wrote in the word here "payment on board."

Q. That is on exhibit "C"?

A. Yes, sir. This one "E" was paid to Mr. Wells, and I paid the men where I put a check opposite it, \$4.62. that amount paid under the total.

Q. Was that receipted before it came to your office?

A. No, sir; it was receipted in my presence. Newman's name was written across the end before it came to me.

Q. In exhibit "D" was that receipted by Newman before it came to your office?

A. No; that was signed in my presence, and I paid the \$6.38 on it.

Q. Do those time checks ever come to your office receipted in advance?

A. Sometimes; I would not say that Murphy's have, but time checks do come receipted in advance.

Q. You would not refuse to pay one because it was receipted in advance if you were satisfied of the genuineness of the signature?

A. I would give them a piece of paper and have them write their name on it and compare it—that is my custom.

Q. (By Mr. JUREY.) Was Mr. Murphy present in your office when those parties signed those checks?

A. I think not.

(Testimony of witness closed.)

M. B. HARBEN, recalled, in behalf of appellant, testified as follows:

Q. (By Mr. JUREY.) You are the M. B. Harben who testified in this case heretofore? A. Yes, sir.

Q. Mr. Harben did you go to West Seattle yesterday in company with Mr. Murphy, and Mr. Martin and Mr. Kelly and myself? A. Yes, sir.

Q. And called with us at the house of Mr. Newman?

A. Yes, sir.

Q. And talked to him in West Seattle?

A. Yes, sir.

Q. Were you present when Mr. Murphy pointed out and located Mr. Newman's house?

A. Yes, sir.

Q. Was or was it not the house that you saw Mr. Newman in at the time you have heretofore testified to?

A. Yes, sir; the same house.

Q. Do you recall whether or not a great number of neighbors, particularly his neighbors, were called in to witness our call upon Mr. Newman?

A. I know that we were detained and not allowed to see Mr. Newman until the neighbors were gathered in by Mr. Martin—he had some purpose in wanting a crowd there.

Q. I will ask you if you recall one Mr. Goldie coming up to where we were in front of the house?

A. I do.

Q. Do you recall what remark he made when he came up? A. The remark Mr. Goldie made?

Q. Yes.

Mr. MARTIN.—Objected to as irrelevant, immaterial and incompetent, and I move to strike it out.

A. I remember a conversation that occurred between Mr. Goldie and Mr. Martin, is that what you refer to?

Q. What did Mr. Goldie say when he came up?

A. First he wanted to know what they wanted with him.

Q. Do you recall the remark that Mr. Martin made to Mr. Goldie in reply to which I called the particular attention of yourself and Mr. Kelly and Mr. Murphy to bear witness to? A. I think so.

Q. Will you state what it was?

A. Mr. Martin stated in answer to that query as to what they wanted—when Goldie asked him what they wanted, he said that somebody had been telling it around that Mr. Newman worked down on the grade, and he said, “Of course we all know that that aint true, but,” he says, “there are some of them are going to try to make out that way, and say so, and I want you here and those others, and we will fix them if they do.”

Q. Was that remark made in the presence of Mr. Murphy?

A. Yes, sir, Mr. Murphy was right there.

Q. And before he had seen Mr. Newman and identified him? A. Yes, sir; before he had seen him.

Mr. MARTIN.—I move to strike this out as irrelevant and immaterial.

Q. I will ask you, Mr. Harben, since you have testified in this cause whether you have been over to West

Seattle other than the time you have just mentioned, and talked generally and particularly with the people living over there relative to this case?

A. I have talked with quite a number of them over there at different times. I have been over there a number of times.

Mr. MARTIN.—I move to strike out the answer as irrelevant and immaterial and redundant and hearsay.

Q. (By Mr. JUREY.) Do you know what the feeling of the people living around the neighborhood of Mr. Newman is with regard to this case? A. Yes, sir.

Mr. MARTIN.—I object to that as irrelevant, immaterial and incompetent.

Q. State what it is.

A. In regard to the people I have talked with over there, they are perfectly willing to see that man get a judgment, irrespective of whether it is right or not; they want to see him get a judgment against the company and get the money, irrespective of whether he is entitled to it. It is exceedingly difficult to get any one at all to speak about the matter. A number of times I spoke to a man, and while he may be very rational and conversational and speak in that kind of a way, but the minute Newman was mentioned they closed up like a clam, and say they don't know him, and would not have a word to say; men that I knew positively did know him.

Q. I will ask you how large a community or village West Seattle is?

A. Well, I can't say that as to the number of people there are; it is scattered over considerable territory.

Q. It is a small village?

A. The population is not very great, but I would not say how much, though. I should judge there was in the neighborhood of four hundred in ordinary times there, possibly not that many altogether.

Q. What character of people, in reference to their calling or occupation reside in West Seattle, and particularly around the neighborhood of Mr. Newman's house?

Mr. MARTIN.—I object to the question and move to strike it out as irrelevant, immaterial, and redundant.

A. I don't know that I can answer that. Of course those that I met—those that I have talked with are mostly working people. There might be others there that never do a day's work, but I can't say what the average of them is, or the majority.

Cross-Examination.

Q. (By Mr. MARTIN.) Did not I say—did not Mr. Goldie say to me when he came up to where we were standing, near Mr. Newman's house, "What do you want with me?" And I stated that "I want you to be present as a gentleman is coming to see Newman who says that he is the same man that worked on his grade"; and didn't Goldie say, "That is a lie," that "we all know better"?

A. No, Mr. Martin—

Q. Or words to that effect?

A. No, sir. You did not accuse anybody of being a gentleman, and he did not accuse anybody of being a liar.

Mr. MARTIN.—Read the question. I want an answer to my question.

A. I will answer it.

(Question repeated.)

A. No, sir; that is not true.

Q. In substance, was not that the conversation?

A. No, sir—in two or three respects it was not.

Q. And did I not say: "We know that, but we want to be in a position to show it"?

A. No, sir; you did not say that in that way, Mr. Martin.

Q. Was not that the substance of the conversation?

A. The substance of your conversation was just as I repeated it in the first instance. You did not accuse anybody of being a gentleman and he did not accuse anyone of being a liar. You were the first one to say, "We know that it is not true, and we will fix anyone that says it is true."

Q. Wasn't it Goldie that said that?

A. No, sir, you were the first one.

Q. And did not I say to you, knowing that you had been running around as a detective, trying to scratch up evidence and to get people to come in here and testify as a detective on a salary, that I told you I knew that was not the truth and said that I proposed to prove it, and that I would fix you—were those not my remarks to you?

A. You said a good many things, Mr. Martin, similar to that to me several times, but not in Goldie's presence.

Q. While he was standing right there as near as Mr. Murphy was?

A. You did not say anything of the kind in Goldie's presence. You did say to me, or something similar to it, but you did not say it in his presence. You did not say that to me up on the hill; you said it to me down below.

Q. Did not I say it to you up there on the hill up by Newman's house? A. In Goldie's presence?

Q. Yes. A. No, sir; you did not say it.

Q. And Murphy was standing right there where Goldie was?

A. No, sir. You made the remark to me.

Q. You have been on a salary, haven't you?

A. I get paid for my work.

Q. How long have you been working on this case?

A. I could not say exactly.

Q. When did you start in?

A. I think my first trip over there was on the 24th day of April.

Q. You went over there under salary?

A. I get paid for any work I do. I get my salary.

Q. And with authority to purchase witnesses if you can purchase them?

A. I never had authority to purchase anything.

Q. You have authority to bring witnesses—to purchase witnesses, if you can?

A. I never had a dollar in my possession at any time to purchase or influence a witness.

Q. You had money at your disposition where they could get it, with which to get witnesses to testify to matters which you suggested?

A. Is that a question or an assertion?

Q. It is my question.

A. I never had a dollar for that purpose, or any similar purpose.

Q. How long have you been working on this case?

A. Since the 24th of April, I think it was; I could not

swear positively, but I think that was the date I made my first trip over there.

Q. And you have been working constantly ever since that time?

A. No, sir. I worked on a dozen cases since then.

Q. How many days did you work on this case?

A. That I cannot say exactly.

Q. A month? A. Oh, no; oh, no.

Q. Nearly a month?

A. No, sir, not half of that actual time put in. If I had worked on it a month you would not have a leg left to stand on.

Q. How much money have you paid Mr. Murphy for his testimony in this case?

A. I never paid Mr. Murphy one penny in my life for his testimony, or for any other purpose.

Q. What promises, if any, have you made Mr. Murphy for his testimony in this case?

A. I never promised him one cent, directly or indirectly.

Q. How much is Murphy to get for testifying as he did in this case?

A. I have not the slightest idea how much he is going to get, whether he is going to get anything; I don't know anything about it.

Q. Did you procure any person to go over to Newman's house and by prying around the windows to get him up when he was alone? A. No, sir.

Q. You had numerous people go over there?

A. What do you mean by numerous?

Q. A number of persons to go over there.

A. To go to his house?

Q. To go into his house.

A. I can give you the names of everyone I sent there, if you want them.

Q. Give us the names.

A. Mr. Murphy, the United States marshal, is all I got to go. I know that Mr. Kelly was sent there by Mr. Gardner, but that is all I sent—that is all I know of.

Q. Did you send anybody else?

A. No, sir. It is possible there may have been one that I can't think of now, but I don't think that I sent anyone. I also think that I tried to get others to go, who refused to go, and didn't go.

Q. You say you did not send anybody over there early in the morning of yesterday to try to get in the house to see what they could do by raising the windows in his house?

A. No, sir, I didn't send anybody there, but you sent someone ahead of you.

Q. Oh, no. A. Oh, yes.

Q. They went over with us on the same boat?

A. No, sir. You sent that young man that was in here that went ahead of you.

Q. Didn't he come on the same boat?

A. No, sir. He was ahead. He was coming back at the time we got there.

Q. Didn't he walk up the hill with me about twenty rods behind?

A. He was over there inside the house when we first went up there, walking backwards and forwards at the side of the house, on the south side of the house.

Q. Before the boat landed?

A. Before we got up there and we went up straight from the boat.

Q. Didn't he come over on the same boat?

A. No, sir. He was over there before. He was standing outside the house.

Q. You are positive of that—as positive of that as anything else you testified to?

A. I am positive he was there when we got there.

Q. You are as positive of what you said a moment ago as anything else you have testified to in this case?

A. I don't say that. I said he was up there at the house when we got there.

Q. Well, I know that he went over in the same boat.

A. Well, I didn't see him on the boat. I would not state positively—he might have run up a short cut up the hill and got there ahead of us.

Q. (By Mr. JUREY.) Mr. Harben, I will ask you if you went into Mr. Newman's house on yesterday when we were all present.

A. Yes, sir.

Q. Did you see Mr. Newman?

A. Yes, sir.

Q. Will you describe his position and appearance?

A. Yes, sir. He was lying on his back on a lounge partially covered up with clothing, and he had a band around his head, around his forehead, reaching back, and pretending at least or affecting to be a man that was suffering very much from something or other—like a sick man or a man that was suffering a great deal.

Q. Were you present when Mr. Murphy spoke to him?

A. Yes sir.

Q. Do you recall his remark to Mr. Murphy?

A. Yes sir.

Q. Will you state what it was?

A. Mr. Murphy stepped up to him so as to look right in his face, and he said, "How do you do, Newman. Do you remember me being here two or three weeks ago calling on you?" And he replied "Yes, there has been a hundred of your or a hundred and fifty—either a hundred or a hundred and fifty."

Q. (By Mr. MARTIN.) That was a warm day yesterday, was it not? A. Rather warm.

Q. Unusually warm for this place?

A. Yes sir.

Q. You knew that the deputy marshal had been over there threatening him with arrest?

A. I went with the deputy marshal over there the day before when he went to serve a paper on him to appear here in this court.

Q. What time was it that you went there that day?

A. On the 1.30 boat we went over there.

Q. You left Seattle at 1.30? A. Yes, sir.

Q. What time did you get up to Mr. Newman's house?

A. I did not look at the exact time then.

Q. Something after two o'clock.

A. It was about five minutes of two o'clock when we got there. We got off of the boat after we had been detained by getting into an argument with Newman. Newman came up to the door and opened the door for him and then slammed the door in his face and he showed Newman his star, that he was a deputy marshal.

Q. Told him he had to come to court and come at once? A. I didn't hear all the conversation.

Q. Didn't you? A. I kept back about a block.

Q. And didn't he tell Newman that he would be arrested if he didn't come with him?

A. I didn't hear that. I heard him from a distance. I know that Newman slammed the door in his face, and he said, "You might as well open, it, or I will."

Q. Didn't he know that Newman was in a crippled condition?

A. I don't think there is a man in the state of Washington knows he is in a crippled condition, because he is not.

Q. Well, he is in a crippled condition, and you know that he is and that he has been in a crippled condition.

A. I don't know what he used to be, but I know what he was when I saw him, and he showed no indications of it then.

(Testimony of witness closed.)

Mr. JUREY.—I will be sworn myself.

JOHN S. JUREY, being first duly sworn, testified as follows:

Mr. JUREY.—I wish to state to the commissioner, as I have no associate counsel within reach, I will beg leave to make a sworn statement:

On the 8th day of June, 1900, I served a demand upon Mr. William Martin, proctor for the appellee, for a surgical examination of the appellee, and now offer the original notice in evidence with Mr. Martin's admission of service on the back; and that on the same day I caused the same notice to be served upon the appellee personally, and the constable's affidavit who served the notice

is attached to the original, and I now offer the notice in evidence as an exhibit "F."

Mr. MARTIN.—I move to strike out these as irrelevant, immaterial, incompetent, redundant and incumbering the record.

Mr. JUREY (Continuing).—On the 9th day of June, 1900, a written reply to the notice which I have referred to was served upon me and I now offer in evidence a copy of the reply which was left at my office, which I ask to be marked as Appellant's Exhibit "G." As yet the appellee has made no response personally to the notice. With reference to the subject matter of the reply I will state that my partner and associate in this case, Mr. Metcalfe, dealt personally with the surgeons whom we desired to have make the surgical examination of the appellee last fall, and also dealt personally with Mr. Martin with reference to the surgical examination, and also appeared personally in court at the time during last fall when the application was made to the court for leave to make the surgical examination of the appellee and, therefore, I have no personal knowledge of those transactions and dealings, but that during all the times mentioned Mr. Metcalfe and myself were full partners and actively engaged in the defense in this case, and consulted freely and fully as to every act and step that was taken, and I felt, and feel now that I am fully advised and was all the time fully advised of every step that was taken in the case. I have no personal knowledge, whatever, of Drs. Eagleson and Ford, or either of them, or any other surgeon, or any one whomsoever, assuring us, or any one representing the

ship, that Drs. Eagleson and Ford, or any other surgeon, could or would contradict the testimony of Drs. Miller and Wotherspoon; or that we received any assurance whatever from Drs. Eagleson or Ford, or either of them, that they could, if opportunity was afforded to make a proper surgical examination, determine whether or not the appellee was injured, and the nature and extent of his injuries. And with reference to the communications with Mr. Martin, I have no knowledge whatever of any offer or consent on the part of Mr. Martin, or any one for him, to make a surgical examination of the appellee that was not withdrawn or qualified in such a way that it would prevent a fair and full surgical examination on our part before such an examination could be reasonably made. That while Mr. Martin several times consented that a surgical examination might be made, yet, as I understood from the reports of my partner made to me of the transactions immediately after such dealings, they were always coupled with such conditions or limitations as we could not accept; and with reference to the statement in the notice relative to permitting Judge Hanford to select surgeons to make a surgical examination at the time of the notice which I have just referred to was served, while Mr. Martin did ask, as stated in the notice, if we would consent to Judge Hanford appointing and directing the surgeons; he did not offer to permit such an examination, but simply asked, as I stated in the notice, if we would consent to his selecting. I informed Mr. Martin at the time that I had no earthly objection to his making such an examination if he desired, but that we insisted upon our demand, just the same, notwith-

standing, and further, that I did not believe that Judge Hanford would select surgeons, as the case was out of his jurisdiction, and I did not think that he would have anything to do with it.

Cross-Examination.

Q. (By Mr. MARTIN.) Did I not ask you, at the time you served that notice on me, if you would consent to Judge Hanford naming the doctor's to make an examination, and did you not say at once, "No"?

A. Yes, sir.

Q. That is true?

A. That is true. And then immediately made in the same breath, made the explanation I have stated and the reasons for it.

Q. Now, Mr. Jurey, when at any time in this case have I withdrawn one single offer of consent to your making an examination, while the case was being tried in the district court, extending from about the 1st of April until in November; when did I withdraw one offer?

A. As I stated, I have no personal knowledge of your withdrawing any offer. It was simply the reports of my partner at the time that you imposed conditions or limitation that we agreed upon at the time we could not accept.

Q. Were you not present, Mr. Jurey, in court at the time at which Mr. Metcalfe made application to the Court for an order requiring the appellee to submit to a medical examination before Judge Hanford, after the time allowed by the Court to you in which to close your testimony had expired, and more than six days afterward, and did I not then get up before Judge Hanford, on the

argument of that motion, and state to the Court that I would then and there consent to Judge Hanford naming three or five physicians to make a medical examination of the appellee?

A. I was not present in court at that application, but my partner reported to me, immediately after coming from the courthouse, the result, and no mention whatever was made of any offer on your part; besides, the record shows nothing of the kind. I make this statement myself, for the reason that Mr. Metcalfe has left the city since this notice was served on us, and will not return until long after this case is closed.

(Testimony of witness closed.)

A. M. BROOKES, a witness called in behalf of the appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) Where do you reside?

A. Seattle.

Q. How long have you lived here?

A. Twenty-four years.

Q. What is your business?

A. Cashier of the Boston National Bank.

Q. How long have you been engaged in the banking business? A. Ten years.

Q. And in the position as cashier of the Boston National Bank? A. Ten years.

Q. In the discharge of your duties as cashier of the Boston National Bank, you have a great deal to do with the handwriting of signatures and comparison of signatures and the determination of their genuineness?

A. I had fifteen years in the postoffice, which was more valuable than that.

Q. How many years in the postoffice?

A. Fifteen; and twelve years in the San Francisco postoffice.

Q. Have your duties as cashier of the bank and your experience in the postoffice rendered you an expert in handwriting and the comparison of signatures?

A. Well, I had a great deal to do with it.

Q. You discharge your duties as cashier on the strength of your ability to compare signatures and determine their genuineness?

A. That is a part of the duties of a cashier, of course.

Q. Mr. Brookes, I now show you the original record in the case of Charles H. Newman against the steamer "Homer," No. 1568, in the United States District Court for the District of Washington, and I call your attention particularly to the signature "C. H. Newman" to the libel, the signature "C. H. Newman" to the verification of the libel, the signature "C. H. Newman" to the libelant's bond and stipulation for costs, and the signature "C. H. Newman" to the amendment to reply, the signature "C. H. Newman" to the verification of the same, the signature "C. H. Newman" to the verification of the replication, and the signature "Charles H. Newman" to the reply to amendment to amended answer, which are established and admitted genuine signatures of Charles H. Newman, the libelant and appellee in this cause; and also show you Appellant's Exhibit "B," and call your attention to the signature "H. Newman" at the end of the exhibit and under the words "Received payment," and ask you if the signatures to the exhibit are the same signature and handwriting and written by the same per-

son as the signatures in the record, particularly the signature to the reply to the amended answer (showing)—the signatures in the record are admitted genuine signatures of C. H. Newman, the appellee in this case.

A. It resembles all the signatures more or less, but this one more particularly than the rest.

Q. I understand that it is your opinion as an expert that the signature "H. Newman" to Appellant's Exhibit "B" is the same handwriting and the same signature?

A. Not the same signature exactly, because it is a different initial, but the "Newman" part is written by the same party evidently.

Q. As the signatures to the documents in the record which I called your attention to, particularly the reply to the amendment to the amended answer?

A. Yes, sir.

Q. I will show you Libelant's Exhibits "D" and "E," and ask you if they were written by the same person, and are the same signatures, with the exception that the first name is "John," while the name in the record is "C. H." and "Charles H.," as the signatures in the record if they were written by the same person?

A. I should think so.

Q. I understand you to testify that it is your opinion as an expert that the signatures "H. Newman" and "John Newman" to all three of the exhibits I have shown you, is the same handwriting as the signatures "C. H." and "Charles H. Newman" to all of the documents in the record that I have called your attention to?

A. That is my opinion; yes, sir.

Q. I will ask you if it appears that the same kind of

a pen was used in writing the signatures on the exhibits and the signatures in the record?

A. Those two (referring to exhibits "D" and "E") were written with a pencil. The exhibit "B" is written with a different kind of ink; I should think it was a blunter pen.

Q. Mr. Brookes, would a person attempting to forge a signature which was written in ink be apt to use the same kind of a pen and ink or a different kind?

A. Well, I should think he would try to make the signature as near as possible, and in order to do that he would certainly have to have as near a pen as was used in the original as possible.

Q. Would a man that was attempting to forge a signature written in ink be apt to use a lead pencil?

A. Decidedly not.

Cross-Examination.

Q. (By Mr. MARTIN.) What characteristics have the signatures "John Newman" on exhibit "D" got to the characteristics of the signature "H. Newman" on exhibit "B" (showing)?

A. Well, there is a very great similarity between them in the entire name.

Q. Well, start in with the name "Newman."

A. That is the name—that is the only name that we are going by, because the initials are varied so.

Q. Is the "N" in the word "Newman" in exhibit "D" the same as the "N" in the verification to the reply to the amendment to the amended answer?

A. As near as anybody ever would write them.

Q. The "N"—the capital "N."

A. The capital "N" is not.

Q. There is no resemblance of any nature or kind whatsoever between the capital "N" in the word "Newman" in exhibit "D" and the capital "N" in the word "Newman" in the reply? A. None.

Q. None whatsoever? A. No, sir.

Q. What resemblance is there to the next letter in the word "Newman?"

A. It is as near as a man could write it.

Q. The "e"? A. Yes.

Q. You say that is as near as a man would write it?

A. That is as near as a man would write it twice.

Q. Does not the lower line raise and come up in a rounding way, and come down the same?

A. Yes, sir.

Q. Leaving quite a space in the center of the letter "e"? A. Yes, sir.

Q. Now, in the "e" in the exhibit there is no space left whatever? A. None whatever.

Q. There is no crossing of the lines?

A. No, sir.

Q. The pen goes straight up and comes down?

A. That is because the pen is blunt and the ink is thick.

Q. But there is no rounding of the "e" the way there is in the other?

A. No, sir. Look at the "e" in the "Charles"—there is no rounding there, is there?

Q. Not as much as in the "Newman."

A. The very difference in the signature is to me proof

conclusive that there could be no forgery. No man writes his name alike twice.

Q. In these exhibits the letters are entirely different?

A. In those exhibits which you spoke of it was made by the same party.

Q. But what you mean to tell the commissioner is that from the general appearance those signatures all could be written by the same person?

A. Yes, sir.

Q. And they might all not have been written by the same man?

A. That is very doubtful. It is very doubtful. I think it would have been a forgery if it had.

Q. Suppose it was a forgery.

A. The best evidence that they are not a forgery is that they are not alike.

Q. Now, I will ask you, Mr. Brookes, if you can pick out a signature in those pleadings wherein it would be possible to produce that signature in the pleadings and the signature on exhibit "D" by holding the pen in the same position or the position a man naturally would hold his pen in writing—pick out one name in the pleadings here which you could produce the same results by holding the pen in the same position as it was held in when he wrote the signature in exhibit "D."

A. I don't see a signature in there that could not be written in the same position—every one of them—these are the same.

Q. You say that the signature to the reply to the libel could be written by holding the pen in the same position that the signature of "John Newman" could be written on exhibit "D"?

A. That is my opinion exactly.

Q. I will ask you if the letter "N" in the word "Newman" on the libel does not show that the pen was held in the usual style and necessarily held in that position in order to produce that letter?

A. That would be my idea.

Q. You could not get that shading down there (showing) and this light line this way by holding the pen in any other position, could you?

A. Well, I am not prepared to say that. I have seen some very peculiar things done with the pen by experts.

Q. Could you get that shading by holding the pen in that position (showing)?

A. I don't think I could.

Q. Could this signature on exhibit "D" not have been written by holding the pen between the fingers?

A. I doubt it very much.

Q. I will ask you if that signature in exhibit "D" could have been written by holding the pen in any other position than holding it between the fore and digit finger?

A. Undoubtedly.

Q. You think it could?

A. Unquestionably, no question about it.

Q. I will ask you why you think so?

A. For the same reason that I think it was written as it is—that is the only reason I think so.

Q. By holding the pen in the natural position you could produce it and by turning the pen between the two fingers and pressing it down, would it not produce that shade by bringing the pen down? A. No.

Q. By holding your pen in this position you get the light line which you find on the rise in exhibit "D" in

the name "Newman" could you not in that same line down there?

A. I don't see any shade in that name at all. It looks to me very like it was written with a very blunt pen. There is no shading about that name that I can see.

Q. I will ask you to look at that signature on exhibit "D" (showing), if the end of the "N" is written up, then the "e" would not be made by holding the pen between the forefinger and the large finger?

A. No, I don't think so. There is no rule to guide a man that writes a hand like that.

Q. Could you as readily make that signature by holding the pen in the natural position and get the shading as you can the other way?

A. I have examined it closely, and it is apparent on the face of it—if it was written in that way they could not have made the "o" in the world, if it was between the fingers.

Q. Why not? A. Because it is too round.

Q. Why could you not make it round just as well by holding the pen between your fore and large finger as the other way? A. Because it is not natural.

Q. Do you mean to say that you can't do it?

A. It is not natural to do it. I write frequently with the pen between the fingers, but it has this tendency, it is more of an angle. You don't make round figures.

Q. These are not round figures, are they?

A. Some of them are.

Q. Very few? A. Some of them are.

Q. That "o" which you referred to, the pen was taken from the paper?

A. This "n" and "m" are exactly like the other.

Q. Is that "m" a round "m"?

A. It is to all intents and purposes—it is not what you would call a sharp "m."

Q. Is that "m" as round as the "m" in the libel?

A. The "n" is.

Q. I am asking you if the "m" is.

A. Well, probably it is not as round, but it is written with a different pen.

Q. Is it as round as the "m" in the verification in the libel? A. Just as round.

Q. Just as large and curved at the top as the other "m" is? A. Yes, sir.

Q. Is it as round as the "m" in the bond in the word "Newman"? A. No, sir, it is not as round.

Q. I will ask you if the name "John Newman" does not show or indicate a man that is not familiar with writing or used to writing? A. Undoubtedly.

Q. I will ask you if the signature to the pleadings does not show a free and easy movement of the wrist and hand in writing the word "Newman"?

A. Yes, sir, to a certain extent.

Q. To quite an extent?

A. Yes, sir, compared with the other signatures, yes.

Q. And in the verification. A. Less.

Q. Slightly less, you think? A. Decidedly less.

Q. And there is more of a movement in all of the signatures, apparently, in these pleadings than there is in the signature on exhibit "D" is there not?

A. Yes, sir.

Q. Every one of them? A. Yes, sir.

Q. More of a free and easy movement?

A. Yes, sir.

Q. And the signature in exhibit "D" is a cramped and steady movement.

A. I would like to qualify that. The latter part of the word Newman is almost identical in every signature. The first part and the large letters, there is a very great difference in the manner in which they are written.

Q. You refer to the last three letters in the word?

A. The last four or five letters.

Q. The last three letters you see in the name, is that what convinces you it is the same handwriting?

A. Not entirely.

Q. But you say there is a vast difference in the others?

A. That is apparent, I think, on the face of it. It does not require any of my say so.

Q. You were just stating a moment ago that the last three letters in all the documents convinces you?

A. I will say the last four letters, commencing with the "w" and the "e"—all but the capitals. The freeness seems to be in the capitals. The difference in the size of the letters—I don't know what you would call it, whether you would call it freeness or not, but they are larger signatures.

Q. I will ask you if the signatures in all those pleadings of Mr. Newman's does not indicate a man that was in a feeble nervous condition?

A. Some do and some do not. The last signature in those pleadings I would not consider the signature of a man in feeble health at all. Some of the other signa-

tures shows a man was nervous, but that is nothing. I never saw a man that is not used to writing sign his name in our signature book but what he was more or less nervous and probably ten minutes afterwards would write a different signature.

Q. Are not those signatures the same, or such that a man who was in a crippled condition and who was not able to sit up and was compelled to lie on his face and to get a support under his chest in order to raise his hand from the bed sufficient to write these signatures, such as a person in that position would naturally make?

A. You mean these in these pleadings?

Q. (Showing.)

A. That one certainly is not

Q. That is in the libel? A. Yes, sir.

Q. And the verification?

A. That is a little more cramped.

Q. In the libel and the verification, you would say that it indicates that the man was sitting up in a strong good position?

A. I would say that the man had command of his hands and could write.

Q. And was free to write?

A. Of course I could not say about that. I could say that the man could use his hand and could write firm.

Q. That would not indicate the condition a man would be in that could not even move or turn his body at all, but must lie on his face in bed?

A. No. A man could use his hand to write—I don't know what the position of the balance of his body must be in if he has the free command of his hand.

Q. A man with a broken back?

A. If he could write I don't see that there is anything in this case that indicates that any ailment is hindering him from writing; I would say that that would be his signature right straight along.

Redirect Examination.

Q. (By Mr. JUREY.) I will ask you if you see anything in the signatures to those exhibits which would indicate to your mind as an expert any of the features or characteristics of an expert penman?

A. Decidedly not.

Q. (By Mr. MARTIN.) If these signatures in exhibit "D" are forgeries, would it not be the work of an expert penman?

A. Well, I don't think that would necessarily follow.

Q. It would not? A. I don't think so.

Q. In other words, simply because it is poor handwriting that an expert would not imitate poor handwriting?

A. No, sir, I wouldn't say that at all.

Q. An expert would use a fine hand in order to forge another signature?

A. He would endeavor to make the signature look like the signature he was copying if possible, certainly.

(Testimony of witness closed.)

E. A. GARDNER, recalled, in behalf of appellant, testified as follows:

Q. (By Mr. JUREY.) Mr. Gardner, since you testified in this case have you been to West Seattle where the appellee resides and talked generally and particular-

ly with the people residing over there, particularly in the neighborhood of Mr. Newman and with those who know him?

Mr. MARTIN.—I objected to as irrelevant, immaterial, incompetent and encumbering the record and nothing but hearsay and nothing to do with the case whatever.

A. I have been to West Seattle and I have talked with several different people that I have met casually, but not generally have I talked with the people over there.

Q. What was the disposition and feeling of the people at West Seattle with whom you talked towards Mr. Newman?

A. A very kindly feeling towards Mr. Newman and a very deep sympathy for Mr. Newman.

Q. Did you find them free or loathe to give you information pertaining to this case or Mr. Newman's condition? A. Loathe to talk about it at all.

Q. Did you find any difficulty in ascertaining his condition and movements from the people residing in that vicinity?

A. Not personally, I have not, because from the time that I went over there they have been advised of the work that was being done. Understand, I sent some of my men over there some time before I went, and the statements that were made to my men were very different from the subsequent statements that were made to me—people talked more readily to me—what little they did say was different from the statements that were reported to me by my men.

Mr. MARTIN.—I move to strike out the witness' answer because the witness did not hear the statements

made to his men, and is simply testifying to what his men told him and hearsay.

A. I am testifying to what they said to me—to me there has been one line ever since I have been there—

Mr. MARTIN.—I move to strike this out as hearsay.

A. (Continuing.) I have had difficulty in getting any one in West Seattle to talk to me about the Newman case.

Mr. MARTIN.—I move to strike this all out as irrelevant, immaterial and incompetent.

(Testimony of witness closed.)

Seattle, June 14, 1900.

Continuation of proceedings pursuant to adjournment, 4 o'clock P. M.

Present: J. S. Jurey, Esq., of proctors for appellant; William Martin, Esq., of proctors for appellee.

FREDERICK K. STRUVE, a witness called on behalf of the appellant, being first duly sworn, testified as follows:

Q. (Mr. JUREY.) What is your full name, Mr. Struve? A. Frederick Karl Struve.

Q. Where do you reside?

A. In the city of Seattle.

Q. How long have you resided here?

A. About twenty-four years.

Q. What is your business?

A. I am paying teller of the First National Bank.

Q. How long have you been occupying that position?

A. With the First National Bank about two years and two months.

Q. Did you have any experience in the banking business prior to that time?

A. Yes, sir, about eight years.

Q. What bank were you connected with?

A. The Boston National.

Q. What position did you occupy with the Boston National Bank?

A. I occupied nearly every position from messenger to assistant cashier during the eight years. Most of the time I was in the receiving teller's and paying teller's position.

Q. In the performance of your duties as paying teller particularly, did you have a great deal to do with handwriting and signatures, to determine whether they are genuine or forgeries?

A. The responsibility of passing upon these things falls upon the paying teller, yes.

Q. Your experience in that particular has rendered you an expert in handwriting, in comparing handwriting and signatures?

A. If you will pardon me making an explanation, Mr. Jurey—I was asked that question once before about being an expert, and I can answer it in this way; that it is necessary in my business to be able to determine about these things and naturally, I suppose, although I would not pose as an expert I must have naturally acquired considerable knowledge in that direction.

Q. You pay out the moneys of the First National Bank, upon the strength of your ability to detect the genuineness of signatures and writing?

A. Yes, sir.

Q. Mr. Struve, I will call your attention to and place before you the original in this case, the signature of Charles H. Newman, the libelant against the steamer "Homer," page 1468, in the United States District Court for the District of Washington, Northern Division, and call your attention to the signature of C. H. Newman to the libel, and the signature of C. H. Newman to the verification of the libel, and to the signature of C. H. Newman to libelant's bond or stipulation for costs, and the signature of C. H. Newman to the amendment to the libel, and to the signature C. H. Newman to the verification to the same, and to the signature C. H. Newman to the verification to the replication, and to the signature, Charles H. Newman to the verification of the reply to amendment to amended answer, which are all admitted the genuine signatures of C. H. Newman, or Charles H. Newman, the libelant and appellee in this case. I call your attention particularly to the signature Charles H. Newman to the reply to the amendment to amended answer, and also to the signature H. Newman on the end of Appellant's Exhibit "B" and to the signature H. Newman under the words "Received payment" on the same exhibit, and ask you if, by comparison, the signature on the exhibit and the admitted signatures in the record are the signatures of the same man, and in the handwriting of the same individual.

(Witness examines signatures.)

A. It is my opinion this is written by the same man.

Q. You think you are able to tell by that comparison whether it is the same signature or not?

A. I maintain it is my opinion it is the same signature, yes.

Q. And I understand you to say the signature H. Newman on Appellant's Exhibit "B" is the same signature and handwriting of Charles H. Newman to verification to reply to amendment of amended answer?

A. Yes, sir.

Q. And the same signature as the other signature C. H. Newman to the record I have called your attention to?

A. Yes, sir.

Q. I show you Appellant's Exhibits "D" and "E" and ask you to compare the signatures of John Newman of these exhibits with the signatures that I have called your attention to in the record, and state whether or not these signatures are the same?

A. I think they are.

Q. And I understand you, Mr. Struve, that in your opinion the signature John Newman on Appellant's Exhibits "D" and "E" are the same signature and written by the same person as the signature of Charles H. Newman to verification of reply to amendment of amended answer in the record, and the other signatures in the record that I have called your attention to?

A. Yes, sir.

Q. I show you the three exhibits, Appellant's Exhibits "B," "D" and "E," and ask you if the signature "H. Newman" on exhibit "B" and the signature "John Newman" on exhibits "D" and "E" are the same signatures or the signatures of the same person, and the handwriting of the same person?

A. It is my opinion they are all written by the same person.

Cross-Examination.

Q. (Mr. MARTIN.) Is there any difference between the signatures on any one of these exhibits?

A. Yes, sir, there is a difference, Mr. Martin.

Q. What is it?

A. There is a difference in the forming of the "N" in several of them here.

Q. What is it?

A. In this signature of John Newman he connected his letters all the way through, and in this other one "H. Newman" he makes a break between the "M" and the "A."

Q. Exhibit "E" is written by a pencil, is it?

A. Yes, sir.

Q. Exhibit "B" is written by a pen?

A. Yes, sir.

Q. What difference is there on exhibit "D" written by pen and ink and the name on exhibit "B" written by a pen?

A. The general character of the writing is the same. The "N" again in that case is differently made.

Q. Is the "W" the same?

A. Not exactly but almost the same.

Q. Is the "M" the same?

A. Yes, sir.

Q. The "M" in exhibit "D" is sharp at the top and sharp at the bottom, and the "M" in exhibit "B" is round at the top, is it not?

A. There is very little difference.

Q. Quite a difference, is there not?

A. Not a difference but what is easily accounted for.

Q. As much of a difference as you usually find between the same letter made by two different persons, is there not?

A. Yes, that might be, but at the same time the letter "M" is a letter that is made—that most people will make very nearly alike, so that there is little to distinguish.

Q. So that most people writing "M" would write it just about the same as appears in all of these letters?

A. That depends upon the man's ability to write well.

Q. What kind of penmanship would you say that signature of John Newman on exhibit "D"?

A. I should call that signature the signature of a man that was not very much accustomed to writing or handling a pen.

Q. It shows strength, does it not?

A. Shows that he has written it.

Q. And awkwardness?

A. Yes.

Q. Strength and awkwardness. The weight on the pen, does it?

Q. No, not necessarily, Mr. Martin. It depends very much on the kind of pen that he had, the kind and quality of the ink.

Q. I ask you to look at the signature to the amendment to the libel, and ask you if that signature of C. H. Newman does not show nervousness and weakness?

A. Shows more of a lack of decision, yes.

Q. Shows lack of decision?

A. I should call it that.

Q. In other words, if a man was perfectly able to write and was attempting to forge a name that might be an indication of lack of decision there, would it not? Or a consideration of what he was going to do?

A. Well, that could be accounted for by a man's being nervous.

Q. And weak?

A. I do not think that it would necessarily express weakness, Mr. Martin. Somthing might have come up to have made him nervous at that time.

Q. But if a man was in a crippled condition, so much so at the time he wrote his name there that he was not able to sit up, that he was not able to lie on his side or lie on his back, but was compelled to lie on his face and had to have a support under his chest to get his arms sufficiently off the bed in order to write that name, would not that be about the manner in which a man's hand would make it?

A. That would easily account for it.

Q. Now, did you find anything in the signature of John Newman on exhibit "D" to indicate anything of that kind?

A. Pardon me for asking a question, but do you mean do I see anything in this signature to indicate that he was not well at the time, or was in a nervous condition or written under like conditions?

Q. Do you see anything in the signature of John Newman on exhibit "D" which would indicate that the man was in the condition that I have now just described to you, that the libelant Newman was in when he signed his name to the amendment to the reply?

A. No, I should not think so.

Q. You do not see that in any of the signatures, do you, on any of these exhibits?

A. That extreme nervousness that we see in this one?

Q. Yes.

A. No.

Q. I will ask you to examine all the pleadings to which you see the name of C. H. Newman, having in view a man in the position and condition which I have described to you, and state if that signature is not the natural consequence of that condition, and if that condition does not indicate itself in that signature all the way through?

A. This one would not indicate a man in a very cramped condition.

Q. Not possibly as much as some of the others.

A. Not as much as the one you showed before.

Q. That is the signature on the bond?

A. Yes, sir.

Q. Examine the rest of them.

A. This one is very much more so than the one you just showed me.

Q. The one on the amendment of the libel would show more of what I say than the signature to the bond?

A. Yes, sir.

Q. That is possibly true. Now, look at some of the others and see if you do not see that characteristic throughout his signature?

A. This one again shows nervousness or a peculiar condition of some kind, but not to such a great extent as

the other one. (Referring to amendment to libel.) This one shows that some, the signature to the affidavit to the replication. I do not notice any great cramped position or any undue excitement in that signature. (Referring to reply to amendment to answer.)

Q. Does not the signature on exhibit "B" indicate a studied copy of the signature to the reply to the amendment to the amended answer, and would that not be such a signature as a person would ordinarily make if he was endeavoring to imitate the signature to the reply to the amendment to the amended answer?

A. No, I do not think so.

Q. You do not think a person in copying and endeavoring to imitate that name could produce the signature you found on that exhibit?

A. No, I do not think so.

Q. Now, about the name on exhibit "D" as compared to the signature of Newman to the verification to the libel?

A. I see no difference but what could be easily accounted for.

Q. Would not the signature you are looking at on exhibit "D" be about such a signature as a man would make in case he was trying to forge the name of Newman or imitate the name of Mr. Newman, taking the name as written to the verification of the libel as a copy?

A. If he were trying to forge it I think he would pay more attention to detail.

Q. How would it be if he had reference to the several signatures there as you will see all the way through, and trying to imitate the handwriting of Mr. Newman

as shown by the different signatures on these pleadings of Mr. Newman's?

A. I do not believe that I quite understand your question, Mr. Martin. Do I understand you to ask how would this appear as a forgery as compared with the signatures, the admitted signatures of Mr. Newman?

Q. Supposing a man had these admitted signatures of Mr. Newman, and was endeavoring to imitate his handwriting following these, would that signature not be such a signature as a person of that kind would endeavor to make, referring to the signature on exhibit "D"?

A. I think he would be inclined to follow out the details a little more carefully than in this signature.

Q. Can you determine the position that the man held the pen when he wrote the signature on exhibit "D" there?

A. The position in which he held his pen?

Q. Yes.

A. No.

Q. Is there anything to indicate the position in which the man held the pen that wrote the signature "John H. Newman" on exhibit "D"?

A. No, with the exception that I might say that this on exhibit "D," "John Newman," is apparently more of a cramped position than the "C. H. Newman."

Q. That is not as smooth a handwriting, is it?

A. Apparently not; and another thing could be accounted for, that this is very much softer paper and more in the nature of a blotting paper, while this is a harder paper and will not take up as much ink.

Q. Would that make any difference in the movement in the writing?

A. The position?

Q. No, the heft of the paper.

A. Make any difference in his position?

Q. No, the question of movement of his hand in writing?

A. Well, the pen that he might have had would have had something to do with that and also his position.

Q. I will ask you if the "C. H. Newman" there in the verification to the libel does not show a free movement of the wrist and hand?

A. Much freer than these others.

Q. Would it indicate a man who has had some little experience in writing?

A. No, I still think that the position would account for it.

Q. Does not the signature to the libel indicate a free movement of the hand?

A. More so than this signature?

Q. More so than the signature to exhibit "D"?

A. Yes, sir.

Q. You notice that there is quite a difference between all of these signatures and the signatures on exhibit "D" is there not?

A. Yes, there is a difference.

Q. And could very readily have been written by two different people?

A. I do not think so.

Q. I will ask you if you have not seen signatures by two different parties wherein the handwriting would re-

semble more than these two signatures, referring to the libel and exhibit "D"?

A. I have seen two signatures of the same man that would be further—which would not resemble each other as much as these do.

Q. That is not the question.

A. Oh, I do not think that I have seen signatures—if you study the signatures carefully written by two men they would show a greater lack of resemblance.

Q. In the first place what position would you say the pen was held in by the man who wrote "John Newman" to exhibit "D"?

A. I should not attempt to explain the position of the pen.

Q. I will ask you, Mr. Struve, if it would be possible for a man to write these two signatures, referring to the signature "John Newman" on exhibit "D," and the signature of Charles H. Newman to the verification to the libel, holding the pen in the same position in both instances?

A. Holding the pen in the same position?

Q. Yes, sir.

A. I think it would.

Q. I will ask you to try and write these two signatures, Mr. Struve, on a piece of paper, holding the pen in the same position, and imitating the two.

Mr. JUREY.—You need not do that.

A. I did not come here to do that; unless I am absolutely compelled to I prefer not to. As I understand it I am called here to give my opinion as to whether these were written by the same man, and not called here to give an exposition of my ability to write or imitate other people's writing.

Q. I will ask you if the position of the pen was not such as I now indicate, and held in the one usually directed by the Spencerian system, between the thumb and forefinger, resting partially between the forefinger and the thumb and pointing over the shoulder; now, if the pen was not held in that position when the word "C. H. Newman" was written there?

A. I do not know.

Q. Do you not know that if the pen were held in any other position than the one that I have indicated that you could not make that "N" as it is made there?

A. No, I do not.

Q. Would it not be necessary to hold the pen in that position in order to get the light line on the upraise of the "N" and the heavy line shade as you come around?

A. When you designate that as the Spencerian system you mean holding the pen in the natural way that men are accustomed to hold pens?

Q. Yes.

A. I should say that was held that way.

Q. And that "N" could not be made in any other position?

A. I do not believe that it was held between the fingers?

Q. Could not be?

A. I do not think so.

Q. Now, this signature if here, for anything, it indicates could be held between the fingers just as well as in the natural position?

A. Yes, sir.

Q. But that one could not be?

A. I should say that was held in the usual manner of holding the pen, and in that one there might be a question as to how it might be held.

Q. There is nothing to indicate there in that signature whatever as to the position the pen was held in at all, simply a steady line all through with no shades or variations. That is true of the signature in exhibit "B" also, no shades or variations.

A. That is the same, yes.

Redirect Examination.

Q. (Mr. JUREY.) I will ask you if it appears that the ink signatures on the exhibits were written with the same kind of a pen as the ink signatures, or the signatures in the record?

A. The quality of the paper is so entirely different that that would be hard to determine, but I would be inclined to say that there was probably a better pen used and a better quality of paper used in the record than on the exhibits.

Q. I will ask you, Mr. Struve, after examining the ink signature on the exhibits you find any of the features or characteristics of an expert penman?

A. No, sir, not at all.

Q. I will ask you if a man attempting to forge a signature would be apt to use the same kind of a pen and ink that was used in the copy or a different kind where he is attempting to forge a signature?

A. He would be apt to try and sign the name under the same conditions as nearly as possible as the signature that he was copying.

Q. Would he be apt to use a lead pencil to forge a signature written in ink?

A. No, I should say not.

(Testimony of witness closed.)

Seattle, June 15, 1900.

Continuation of proceedings pursuant to adjournment,
3 o'clock P. M.

Present: J. S. Jurey, of proctors for appellant; William Martin, of proctors for appellee.

JACOB FURTH, a witness called on behalf of the appellant, being first duly sworn, testified as follows:

Q. (Mr. JUREY.) State your full name?

A. Jacob Furth.

Q. Where do you reside? A. Seattle.

Q. How long have you resided in Seattle?

A. Seventeen years.

Q. What is your business, Mr. Furth?

A. Banking business.

Q. How long have you been engaged in the banking business?

A. Ever since I have been here in Seattle.

Q. What bank are you connected with?

A. The Puget Sound National Bank.

Q. What position do you hold in that bank?

A. I am president of the bank.

Q. How long have you been connected with the Puget Sound National Bank?

A. Since its organization. I organized the bank.

Q. When was it organized? A. 1882.

Q. Have you held any other positions in the bank?

A. Yes, sir, I was cashier for ten years.

Q. Then president of the bank? A. Yes, sir.

Q. Mr. Furth, in your business as a banker you have had a great deal to do with the comparison of signatures and handwriting, and determining their genuineness or whether they are forgeries? A. Yes, sir.

Q. Has the experinece you have had in that particular rendered you an expert in handwriting to determine the similarity and genuineness of signatures?

A. Well, I have had a good deal of experience; whether I am an expert or not I am not in a position to say. But I am called upon very frequently now to compare signatures, and during the time that I was cashier almost daily.

Q. You paid out the moneys of the Puget Sound National Bank upon the strength of your ability to correctly determine the genuineness of signatures?

A. On my judgment, yes.

Q. Mr. Furth, I will show you the original record in this case of Charles H. Newman against the steamship "Homer," No. 1468, United States District Court, and call your attention particularly to the signature of C. H. Newman to the libel, the signature of C. H. Newman to the verification of the libel, the signature of C. H. Newman to libelant's bond or stipulation for costs, the signature of C. H. Newman to amendment to libel, the signature of C. H. Newman to the verification to the same, the signature of C. H. Newman to the verification of replication, and the signature of Charles H. Newman to the verification of reply to amendment to amended answer, and particularly to the last signature mentioned, which are established and admitted signatures

of Charles H. Newman, the libelant and appellee in this case. I will also call to your attention and show you Appellant's Exhibit "B" and the signature "H. Newman" on the end and under the words "received payment" on the exhibit, and ask you to compare the signatures on the exhibit with the signatures that I have called your attention in the record, and state whether or not the signature on that exhibit are the same handwriting and written by the same person as the signature in the record?

A. I think they are. I think the same party wrote both the signatures.

Q. You have examined all the signatures in the record? A. I have seen them.

Q. Then, it is your opinion from your experience as a banker that the signatures "H. Newman" on Exhibit "B" is the same handwriting and was written by the same person as all the signatures "C. H. Newman and Charles H. Newman" to the documents in the record?

A. Yes sir.

Q. Now, I will show you Appellant's Exhibits "D" and "E" and call your attention to the signature "John Newman" on each of these exhibits and ask you to compare them with the signatures in the record that I have called your attention to, and state whether they were written by the same person and in the same handwriting as the signatures "C. H. Newman" and "Charles H. Newman" in the record?

A. The characteristics of the handwriting are the same as the other signatures, but I would not state positively that the same man wrote these.

Q. In your judgment the characteristics of the signatures on these exhibits and in the record are very similar? A. Yes, sir.

Cross-Examination.

Q. (Mr. MARTIN.) Have you not in your experience, Mr. Furth, seen handwriting by two different parties, having as much resemblance as the resemblance between the handwriting in the name Newman in Appellant's Exhibit "D" in the verification of the libel in the pleadings?

A. Not in this kind of writing. I have seen signatures that were very similar, almost impossible to tell them apart written by different people, but they were expert in writing. No man that writes a handwriting like this do we ever make a mistake on. There is something about it that I have never seen one man's writing write as poorly as this and another man's equally poorly that look alike.

Q. Now, Mr. Furth, if it were an expert that wrote the name on exhibit "D" and Appellant's Exhibit "B" for the purpose of imitating Mr. Newman's signature which is on the libel, are these names not written in the manner that an expert would try to write them and imitate them? A. No expert ever wrote this.

Q. How do you know?

A. Because an expert would not write that way.

Q. If it was his object to get the signature where parties could come in and testify it was the same handwriting as the name in the libel?

A. Oh, it is possible that a man may—

Q. Now, an expert would be particular to imitate it even by a little worse hand, would he not, for the purpose of making people believe it was the real signature?

A. That would not make it so, for there would still remain the characteristics about the original handwriting that a man will recognize.

Q. But it would have a tendency to convince the person in the first place that it was the same handwriting?

A. Possibly so.

Q. Now, an expert forger would know these matters as well as an expert banker, would he not, that these are characteristics which should be brought out to convince a person that this is the same handwriting?

A. No, sir.

Q. They would not?

A. No, sir. There is something about handwriting that is very hard to explain. A man who is in the habit of handling signatures and passing them, it strikes him at a glance if there is anything wrong about it, and then on closer examination he will find that either he was mistaken at his first glance or that he verifies his opinion.

Q. Now, I will ask you to examine the word "Newman" on Appellant's Exhibit "D," Mr. Furth, and state whether or not the first letter of the word "Newman" has any resemblance to the first letter of the word "Newman" in the libel? A. No, sir.

Q. None what ever? A. Not the first letter.

Q. How about the next one?

A. The "A" and the "N" are formed very much like the other, the same characteristics. The "N" has and the "W" has but, it might have been written with the

hand trembling; the "Wman" look alike in the signature.

Q. "M-a-n" look very much the same as in the signature? A. Yes, sir.

Q. Now, how about the signature to the libel of Newman. A. This signature is all correct.

Q. Is there not quite a difference between the name "Newman" to the libel and the name "Newman" on exhibit "D"?

A. Not a great deal, no.

Q. There is? A. The "N" is different.

Q. And there is quite a difference in the movement, is there not?

A. That might be accounted for by the way he holds his pen. This appears that his hand was not steady (on exhibit "D") and this one that his hand was steady (on the pleadings) the formation of the letters is identical.

Q. Now, if, on the other hand, Mr. Furth, the man that wrote this name "Newman" below "received payment" here, was a man engaged on a grade and strong and able to work, while the man that wrote the name "Newman" to the libel was a man who had his back broken and was lying on his face, unable to lie on his side or on his back even, and it was necessary to put a support under his chest in order to raise his body up sufficiently to write that word "Newman" to the libel, would that have any effect on you as to your opinion in the case?

A. This man being a strong man and this man a weak man?

Q. Yes, sir.

A. Well, this does not look to me as though it was written by a man who was—this first one (referring to

the libel)—it is written pretty plain and perfectly steady. This signature to the verification looks more nervous than the first.

Q. These were both written at the same time.

A. Very probably what may be this looks more nervous than the other. It does not require an expert to tell that, anybody can tell that. This one, when he wrote this, was steadier than this one. It may have been written the same day or within five minutes, still this looks more trembling.

Q. These were both written at the same time, within a minute, by the same pen.

A. That is true, but nevertheless his hand was not as steady as when he wrote the first one.

Q. And he was lying in the position that I have indicated to you. Now, this signature to exhibit "D" was written by a man who has been working on the grade, chopping and shoveling and wheeling a wheelbarrow.

A. Of course I don't know how able bodied he was.

Q. These are the facts. Now, you say that the signature here on the exhibit seems to be more nervous and weaker than the other?

A. I did not say weaker.

Q. More nervous?

A. A man may be nervous and be healthy. I have known times when I could write a steadier hand than at others.

Q. That is true.

A. And so with anybody else. But at the same time my signature will always have the same characteristics no matter how nervous I may be.

Q. Yes; but this signature on exhibit "D" shows a cramped and indecisive way of writing?

A. Not a cramped writing, the formation of these letters is exactly the same as the other, neither is cramped.

Q. They show that the hand moved slowly, do they not?
A. Yes, in both of them.

Q. Does the signature "C. H." show that the hand moved slower?

A. No, the "C. H." was written faster.

Q. With a free movement of the wrist?

A. Yes, sir.

Q. Do you find any such movement in the signature "Newman"?
A. Yes, "m-a-n."

Q. The, "m-a-n"?

A. Yes, perfectly free; not cramped at all.

Q. But you see the signature to the libel the "m-a-n" shows it is cramped, it is not as free as the first part of the name.

A. What do you call that?

Q. That is the libel. One is the verification.

A. This second signature to the libel seems to show that the man was more nervous when he wrote than the first one or that his hand was trembling where the other is more perfect, the letters are more perfectly formed in the first.

Q. But do not they show a freer movement and better penmanship than in exhibit "D"?

A. Yes, sir.

Q. They do?
A. Yes, sir.

Q. So that in that respect there is quite a little difference in the names in the way of writing?

A. In respect to the freeness of the hand?

Q. Yes.

A. As I stated before that might be brought about simply by the condition of the man's hand when he was writing.

Q. Can you tell from exhibit "D" the position the man held his pen when he wrote that name?

A. Well, no, I am not an expert in that.

Q. Can you from the signature on the libel tell how he held his pen and how the pen must necessarily have been held to produce the shades?

A. No, I would not venture to say how he held his pen.

Q. But you know that you must hold the pen in a certain position to make a certain shade?

A. Certainly, yes.

Q. And the signature to exhibit "D" could have been written by holding the pen in most any position, could it not?

A. Well, hardly.

Q. It could have been produced by holding it in an entirely different position from the way it must necessarily have been held when the name to the libel was written?

A. That is true, yes; I should say so.

Q. Do you notice that the word "Newman" in exhibit "D" is spelled "N-e-u-m-a-n" under the words "received payment"?

A. No, I think that is "N-e-w."

Q. Does it not look more like the letter "u" than "w"?

A. At first looking at it it looks like a "u" but when you come to examine it you will see it is a "w" and as near a "W" as a poor writer will make it.

Q. Do you consider the man who wrote the name

“Newman” here to all these pleadings a very poor writer?

A. Yes; I do not think that he is a good writer.

Q. Now, if a man’s handwriting which was written when he was in his normal condition shows that he was a good writer and wrote a much better hand than appears in these pleadings, and that the man who wrote exhibit “D” is a person who worked on the grade, that would make a difference in your opinion, would it not, as to who wrote these signatures?

A. No, sir, it would not.

Q. It would not? A. No, sir.

Q. What you mean to say is that these signatures could have been written by the same person?

A. Yes, sir.

Q. Do you mean to say that they could not have been written by two different persons?

A. I did not say that, sir.

Q. You would not say that?

A. No, sir. A man may forge another’s name.

Q. But even that could be written by two different persons without the party intending to forge another’s name? A. Well, I do not think so.

Q. It is not impossible?

A. No, not impossible.

Q. But you have seen handwriting by two different persons which resembled fully as much as the name “C. H. Newman” to the libel here and the word “Newman” under the words “received payment” on Appellant’s Exhibit “D”?

A. I have.

Redirect Examination.

Q. (Mr. JUREY.) Does it appear, Mr. Furth, that the ink signatures to exhibit "B" and exhibit "D" were written with the same kind of a pen as the signatures in the record? A. As in this?

Q. Yes.

A. This (looking at libel) looks more like it was written with a sharp pen and this more like it was written with a stub pen (referring to exhibit "D.")

Q. If a man was attempting to forge the name by writing—from your knowledge of handwriting would he be apt to write with the same kind of a pen and just the same kind of ink that was used in the copy from which he was copying or would he be apt to use a different one? A. If he was trying to imitate it?

Q. Yes.

A. I should not think so, I never practiced that my-same pen if he wanted to be successful about it.

Q. If a person was attempting to copy or forge the name written in ink would he be apt to use a pencil?

A. I should not think so, I never practiced that myself.

Q. Did you see in the signature to these exhibits any of the characteristics or features of an expert penman?

(Referring to receipts.)

A. No, sir, they are not.

(Testimony of witness closed.)

Mr. M. B. HARBEN, recalled on behalf of the appellant, testified as follows:

Mr. MARTIN.—I object to putting the witness on the

stand so many times. Mr. Harben has been a detective and a standing witness and he has been called so many times I object to cumbering the record with his testimony.

Q. (Mr. JUREY.) Mr. Harben, you testified the other day that you accompanied Mr. Murphy, Mr. Martin, Mr. Kelly and myself with others to West Seattle?

A. I testified so, yes.

Q. You were in the room when Mr. Murphy was introduced to Mr. Newman? A. Yes, sir.

Q. Was the man that he was introduced to and spoke to the same man that you had testified to in this case as being Charles H. Newman?

A. Yes, sir, he is the same man that I had seen at different times.

Q. And he was in the same house that you have testified to?

A. Yes, the same house when I saw him at other times.

(Testimony of witness closed.)

Mr. MICHAEL KELLY, recalled on behalf of the appellant, testified as follows:

Mr. MARTIN.—I object; Mr. Kelly has testified and he told everything that he knew and they have had all the opportunity necessary to put in their direct examination.

Q. (Mr. JUREY.) Mr. Kelly, did you accompany Mr. Murphy, Mr. Harben, Mr. Martin and myself with others to West Seattle on the day that has been testified to here, and identify Mr. Newman, the appellee in this case? A. Yes, sir.

Q. Where you present in the room when Mr. Murphy was introduced to Mr. Newman? A. I was.

Q. Was the man that Mr. Murphy was introduced to and spoke to at that time the same man that you have testified to in this case as being Charles H. Newman?

A. Yes, sir, he was.

Q. Was it at the same place you saw him?

A. I saw him there once before and once at the boat.

Cross-Examination.

Q. (Mr. MARTIN.) You were present at the time that Mr. Murphy went into where Mr. Newman was?

A. Yes, sir, I was.

Q. You heard me introduce Mr. Newman to Mr. Murphy, did you? A. I did.

Q. You also heard me proceed to say to Mr. Murphy and to Mr. Newman; "Mr. Newman, this is the gentleman, Mr. Murphy, who says that you worked on that grade in March and April"?

A. Yes, you started in that way.

Q. What did he do, what did Murphy do then?

A. He turned and walked away.

Q. He went right straight out, didn't he?

A. Yes, sir.

Q. He would not and did not face Mr. Newman while I made that statement? A. He walked out.

Q. He turned around and walked out, did he not?

A. Yes, sir.

Q. And did not stand there before Mr. Newman and would not stand before him until I made my statement

so as to explain to Mr. Newman the reason of our being there. A. He did not stay there.

Q. He did not? A. No.

Q. He walked right out. You heard me request him to stand there and to wait?

A. Yes, the first part of the speech. You started in to tell him who he was and there was no waiting done, he turned and walked away.

Q. That is not what I asked you. (Last question read to witness.) To come back or words to that effect when he was going out?

A. You see I had got out, I was about the first one out of the room, perhaps I had got to the door, I did not hear you make any more statements.

Q. Did not you hear me make that demand in a loud statement to him?

A. There was three others traveling along after me, I was in the lead walking out.

Q. Do not you know that he refused to confront the witness or to confront Mr. Newman at the time that I stated that he had testified that Mr. Newman was working for him on the grade, and went right straight out and would not wait?

A. Well, at your first allusion he walked out; that is about as near as I can get at it.

Q. And you know he refused to wait and confront Mr. Newman while that statement was being made?

A. Yes, sir.

(Testimony of witness closed.)

Testimony on behalf of appellant closed.

Seattle, June 21, 1900.

Continuation of proceedings pursuant to agreement.

Present: William Martin, Esq., of proctors for appellee; J. S. Jurey, Esq., of proctors for appellant.

TESTIMONY ON BEHALF OF APPELLEE.

WILLIAM CRAEMER, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

(At the request of proctor for appellant the witnesses for the appellee were excluded from the room during the giving of testimony on behalf of appellee.)

Q. (Mr. MARTIN.) State your name in full.

A. William Robert Craemer.

Q. Where do you live? A. At West Seattle.

Q. Are you acquainted with Mr. Charles H. Newman?

A. Yes, sir.

Q. The man that was injured in this case?

A. Yes, sir.

Q. You live in his house, do you not, Mr. Craemer?

A. Yes, sir.

Q. Have you been living there ever since he was injured? A. Yes, sir.

Q. I will ask you, Mr. Craemer, if Mr. Newman, Charles H. Newman, ever worked on the street grade over there in the month of March or in the month of April, 1900?

A. No, sir, I never seen him working. I have been home every day, though.

Q. What time would you leave home in the morning?

A. I would leave between half past eight and a quarter of nine.

Q. Every morning? A. Yes, sir.

Q. Where did you go then?

A. Go to school.

Q. How old are you?

A. Sixteen last birthday.

Q. Where would Newman be when you left home every morning?

A. I always found him in bed when I left there asleep.

Q. Was that true of every morning?

A. Yes, sir, every morning ever since he has been hurt.

Q. Did you go home for dinner?

A. Sometimes I did, but not very often.

Q. When you went home would you find Mr. Newman at home?

A. Yes, sir, always be at home.

Q. What time would you get home in the evening?

A. I would get home about half-past four or five o'clock.

Q. Did you find Mr. Newman home then?

A. Yes, sir, I would find him every time. He would be out for a walk sometimes.

Q. You may state Mr. Craemer, if you know whether Mr. Newman worked on the street car grade over there on the 14th of March, 1900.

A. No, I do not think that he did ever work; he never did that that I know of.

Q. Has he ever done any work of any kind since he has been hurt? A. No, sir, I have not seen him.

Q. Is he able to do any work?

A. I have never seen him do any work and I do not think he can.

Q. Was he home at half-past eight o'clock when you left to go to school on the 14th or 15th or 16th or 17th or 19th of March, 1900?

A. As near as I can remember I think he was. He was always there when I went to school.

Q. Every time? A. Yes, sir.

Q. Were you going to school at that time?

A. Yes, sir.

Q. I will ask you if he was at home on the 4th, 5th, 7th, 8th, 9th, 10th and 11th of April, 1900.

A. Yes, sir, I think he was. I was at school.

Q. Did you see him when you went away in the morning about half-past eight? A. Yes, sir.

Q. And you saw him when you came back at noon on the days that you did come back?

A. Yes, sir.

Q. And you saw him at half-past four when you came home, at that time he was in his own house?

A. Yes, sir.

Q. State whether or not he is required to use a steel jacket around his waist of any kind?

A. I saw him wear it every morning when he gets up.

Q. State whether or not he is in a crippled condition?

A. I think he is, he has always walked with a cane, and he is all the time saying something about his back.

Q. Does he complain of pain?

A. Yes, he complains of it quite a little.

Q. He was required to lie in bed a long time, was he not? A. Yes, sir.

Q. How long about?

A. I do not remember just how long it was.

Q. Up until a short time ago?

A. Yes, sir.

Q. Now, he has a boat over there, has he not.

A. Yes, sir.

Q. Was that boat painted?

A. Who painted that boat?

A. Well, I painted about half of it and another gentleman by the name of Charley Masculin painted the rest of it.

Q. Did Newman paint any of that boat?

A. No, sir, he did not.

Q. State whether or not Mr. Newman was boarding at home on the dates I have mentioned in March, and the dates I have mentioned in April, that is, if he took his meals at home? A. Yes, sir. He did.

Q. State whether or not if you know, if he was boarding down at Wells' during these times?

A. He never boarded there.

Cross-Examination.

Q. (Mr. JUREY.) Mr. Craemer, how old did you say you were? A. Sixteen last birthday.

Q. You are living at Newman's house?

A. Yes, sir.

Q. Are you any kin to him?

A. He is my brother in law.

Q. How long have you been living with him?

A. Well, somewheres around four years, I think.

Q. Where did you go to school?

A. West Seattle school.

Q. How far is that from Newman's house?

A. Oh, it is about a mile, I think.

Q. What time of day did school open in the morning?

A. At nine o'clock.

Q. Now, you say you were going to school during the months of March and April, this year?

A. Yes, sir.

Q. Every day?

A. Yes, sir, I never missed a day.

Q. What time did you say you left Newman's house to go to school?

A. Sometime between half-past eight and a quarter of nine.

Q. Now, you say you saw him at home every morning before you left?

A. Yes, sir, he was in bed every morning when I left for school.

Q. Every morning? A. Yes, sir.

Q. Can you recollect a single morning when you did not see him in bed when you left there?

A. No, sir, I cannot.

Q. Did you go to look and see if he was in bed?

A. Well, I went through the room every morning when I came downstairs.

Q. Specially to look and see if he was in bed?

A. Yes, sir.

Q. Now, you say he never worked on the grade over there? A. No, sir, he never did.

Q. How do you know that he did not?

A. Well, he could not have worked.

Q. Well, he might have worked on the grade after you went to school? A. No, sir.

Q. Why could he not. You simply say that he did not work on the grade because you think he could not, is that it?

A. Well, I would see him at home every morning and at noon and in the evening again.

Q. How do you know that he did not work on the grade after you went to school—simply because you think he could not? A. Yes.

Q. Now, is there anything particular that impresses upon your memory that you saw him in bed on the 14th, 15th, 16th, 17th, 18th and 19th days of March?

A. No, there is not, but I know I seen him at home every day.

Q. You say that you saw him home every morning that you went to school? A. Yes, sir.

Q. And there is nothing to impress it on your memory that you saw him on these particular mornings except that you saw him every morning?

A. No, sir.

Q. Now, was there anything to impress on your memory these particular days when you came home from school at home? A. No, sir, there is not.

Q. Now, is there anything that impresses on your memory the fact that you saw him at home on the 4th, 5th, 7th, 9th, 10th and 11th days of April last?

A. No, sir.

Q. Or that you saw him at home whenever you came home from school on these days?

A. No, sir.

Q. Now, you say you helped put paint on these boats of Newman's? A. Yes, sir.

Q. When did you paint them?

A. I do not know the date.

Q. You do not know what dates you painted on them?

A. No, sir.

Q. Do you know when Masculin painted on them?

A. Well, he painted the same days that I did, maybe he knows, I don't know.

Q. You don't know what date?

A. No, sir.

Q. You say that he painted the same days that you did.

A. Yes, sir, he painted the same days that I did.

Q. At the same time?

A. Well, we started on the first and then I went up to the house and he finished it.

Q. Painted it all in one day?

A. Yes, it was painted all in one day.

Q. What painting you and Masculin did there was done in one day? A. Yes, sir.

Q. Now, what date was that?

A. I do not remember the date.

Q. You do not know what date it was?

A. No, sir.

Q. Was it in the month of March?

A. It would be in the last part of March or the first of April.

Q. About the last week in March or the first week in April, would you put it?

A. I guess that is about it.

Q. Well, how do you know nobody ever painted on these boats except you and Masculin?

A. Because I was down there when it was done.

Q. You were not there when Masculin finished it up?

A. I was there until he had it pretty nearly all done.

Q. You were not there all the time?

A. No, not all the time.

Q. How do you know that someone else did not paint while you were there?

A. I do not think anybody did because they were not hired to do it.

Q. You do not know whether or not anybody painted it? A. No, sir.

Q. You say that Mr. Newman did not board at Wells' boarding-house on the 14th, 15th, 16th, 17th, 18th and 19th days of March? A. Yes, sir.

Q. Was there anything that impresses on your memory that he did not board there at that time?

A. Yes, sir.

Q. You do not know that he never boarded away from home?

A. No, sir, he never went away from home.

Q. Then, you say that he did not board there during these days simply because you think he never boarded away from home?

A. He has never boarded away from home since I have been out here.

Q. Did you see him take all of his meals at home?

A. I never seen him take his breakfast once.

Q. Did you ever see him take his dinner or lunch in the middle of the day?

A. I saw him have his lunch when I came home from school.

Q. You have seen him eat dinner when you came home from school?

A. I did not always come home from school; whenever I did I would see him.

Q. How often would you not come home from school?

A. Well, during pretty near the last term I would come home pretty nearly every day.

Q. Well, was there anything that impressed on your memory the fact that he did not take his meals at home during the days in March that I have mentioned?

A. No, sir.

Q. Now, is there anything that impresses on your memory that he did not take his meals at home during the 4th, 5th, 7th, 9th and 10th of April last?

A. No, sir.

Q. You simply believe that he did take his meals at home these days because you think he usually did, is that it? A. Yes, sir.

Q. You say that Newman uses a steel jacket?

A. Yes, sir.

Q. What kind of a jacket is it?

A. I do not know that I have seen the jacket. I have seen him wear around his waist.

Q. You do not know whether it is a steel jacket or not?

A. I do not know whether it is or not, I guess it is.

Q. He wears something around his waist?

A. That is what he calls it, a steel jacket.

Q. He wears a steel jacket? A. Yes, sir.

Q. You never examined it?

A. I never did.

Q. Who told him to wear a steel jacket?

A. I do not know, I suppose the doctors did.

Q. You do not know whether they did?

A. No, sir.

Q. When did Mr. Newman first get out of bed?

A. I do not remember just when it was.

Q. Just before Christmas?

A. It was about Christmas, I guess.

Q. You say that he got out of bed before Christmas?

A. I am not sure whether it was after or before.

Q. You are not sure about that?

A. No, sir.

Q. When did he first commence going out of doors?

A. It was after he got up, say a week, but I don't remember.

Q. You do not remember whether it was before Christmas or not? A. No, sir.

Q. Do you know whether it was before Thanksgiving or not? A. I do not remember.

Q. Do you remember whether it was before the first of September or not that he first got up?

A. No, he never got up before the 1st of September.

Q. He never got up before the first of September?

A. No, sir.

Q. When was the first time that he came over to Seattle? Before Christmas?

A. I do not remember.

Q. He frequently goes out, does he not, and takes long walks? A. No, sir.

Q. He has not been out for quite a long while lately?

A. No, sir.

Q. Heretofore he has been going out?

A. He has been told to go out by the doctors whenever he could.

Q. Had he started to walk in January or February?

A. I do not know when it was.

Q. Where would he take his walk?

A. He would walk around the house.

Q. Up and down the hill?

A. Once in a while he would go down to the dock.

Q. Now, when was the first time that he went down to the dock? A. Before we painted the boats.

Q. You do not know when it was?

A. No, sir.

Q. It might have been before Christmas for all you know?

A. It might have been, I don't know.

Q. Mr. Craemer, you made an affidavit, did you not, in this case along about the first of May, or the 9th of May?

A. Well, I do not know as I signed one.

Q. In your affidavit you said that Mr. Newman is required to wear a steel jacket; you do not know whether it is a steel jacket or not, do you?

A. Well, I have seen him wear it, I do not know whether it is a steel jacket or not.

Q. Did Mr. Newman ever do any work down in his shop? A. No, sir.

Q. He has a shop down on the beach, has he not?

A. Yes, sir.

Q. How do you know that he did not do any work there?

A. I would be down there nearly every time that he would go down and I would not see him do any work.

Q. While you were at school you do not know where he went, do you?

A. I nearly always went down in the afternoon, after school.

Q. He could have gone down and worked at his shop?

Mr. MARTIN.—I object to this style of cross-examination.

Q. While you were at school could not he without your knowing it? A. Yes, sir.

Q. Then, you do not know whether he worked at the shop or not?

A. He never worked while I was down there.

Q. You simply do not know that he worked at the shop, that is it? A. Yes, sir.

Q. Mr. Craemer, Mr. Newman has told you that he was a cripple, has he not, and talked to you that way?

A. Yes, sir.

Q. You never examined him to see?

A. No, sir.

Q. All you know about it is what he tells you?

A. Well, all I know is what he tells me, but I see him walk around and I know he is a cripple.

Q. By the way he acts? A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) How many rooms are there downstairs in Mr. Newman's house?

A. There are three rooms downstairs besides the living room.

Q. You used to go through his room when you went downstairs in the morning? A. Yes, sir.

(Testimony of witness closed.)

LEN WELLS, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. How long have you lived over there?

A. I have lived over there five months.

Q. You were living over there during the months of March and April, 1900?

A. Yes, sir.

Q. Do you remember the men that worked with Murphy in the months of March and April, 1900?

A. Yes, sir. That is, let me see now—

Q. You boarded some of them during these times?

A. Yes, sir.

Q. I will ask you whether you are acquainted with the appellee in this case, Charles H. Newman?

A. Yes, sir, I am now.

Q. I will ask you if he boarded with you any time in the months of March or April, 1900?

A. No, sir, he never did. He never boarded with me to the best of my knowledge.

Q. If he had boarded with you you would have known it, would you not? A. I think so, yes sir.

Q. I will ask you if there was a man boarding at your place during these times, who went by the name of Newman?

A. Well, I have his name on my book as H. Newman, but I could not call the man to memory because there were so many there at the time.

Q. I will ask you to examine Appellant's Exhibit "E"

and state if that is your signature to the bottom there, as receiving payment?

A. Yes, sir, that is my signature.

Q. I will ask you if Charles H. Newman, the appellee in this case, the man that was injured, signed that name on the end there?

A. Well, about these checks. You will understand that I was not there all the time, and the bartender, if I was not there, he answered the same purpose as me, and of course I could not say because there were so many of these checks that Murphy—I could not say whether I was in town or whether I was in the saloon. In fact I was often in bed, and if a man came up in the morning—I would be up very late at night, and these checks would be given and I would never see them until they were taken to the office.

Q. So that what you mean to say is that check might have been delivered to you when you were not present?

A. Yes, sir.

Q. And for that reason you could not swear who signed on the end?

A. No, sir, I could not.

Q. That is what you mean to say, is it?

A. Yes, sir.

Q. But you do know Charles H. Newman, the appellee, never boarded with you there?

A. Yes, sir.

Q. That check was for board at your place, was it not?

A. Yes, sir.

Q. I will ask you if you have ever seen this gentleman here, Mr. Harben?

A. Yes, sir, I have.

Q. I will ask you if he has not been over trying to get witnesses and to get you to swear this man Newman did board with you?

A. Well, he has been over several times asking me before I knew the gentleman if I knew such and such a man as Newman, and I told him that I did not recollect him at the present time. I did not know this man Newman but I told people who he could go to that were living over there that he could find out, so I referred him to them. Of course I do not know the result of what he got from them.

Q. Did not he ask you to testify in this case that this Charles H. Newman who was injured had boarded with you?

A. Well, he asked me if he had ever been boarding there and I told him at that time that I had not seen Newman lately, and after I went and seen him I told him that he had not boarded there that I ever knew of, I could not call him to memory.

Q. You have gone and seen Charles Newman?

A. Yes, sir.

Q. Up at his home? A. Yes, sir.

Q. And if that signature which appears on the end there John Newman was signed in your presence, you can swear it was not signed by Charles H. Newman?

Mr. JUREY.—I object because the witness has already testified it was not signed in his presence.

A. I say that I do not know, that is right. This check might have been signed when I was not there. I could not swear to that at all, because there was a number of these checks given when I was not there. If this check had been given when I was there by this man Newman I would surely remember him, but there were so many of these checks given when I was not there of course I could not swear to that.

Cross-Examination.

(Mr. JUREY.) Mr. Wells, a good many of Mr. Murphy's men were boarding with you at that time, were they not? A. Yes, sir, a good many.

Q. And you say that you were not always around in person? A. No, sir, I was not.

Q. You had a couple of bartenders to look after the business in your absence.

A. Well, yes, they were always near there. Now, the man who was there first, Tommy Murphy—he is in Cape Nome now—he knows this man Newman very well, and that is his signature that is on my book. He wrote this man Newman's name H. Newman, and that is his signature.

Q. (Mr. MARTIN.) Tommy Murphy wrote Newman's name? A. Yes, sir.

Q. Is that Tommy Murphy's writing on there, did he write that "H. Newman"—is that his signature?

Mr. JUREY.—I object for the reason that no foundation has been laid for the identification of that signature.

A. That is not Tommy Murphy's signature; I can state that. (Referring to exhibit "B.")

Q. Where did Tommy Murphy write Newman's name? A. On my book.

Q. You do not know whether he wrote that on there?

A. No, he would not write his name on any of these checks.

Q. He wrote his name on your book?

A. Yes, sir.

Q. (Mr. JUREY.) You do not mean that Murphy wrote Newman's name on the time check?

A. Oh, no, he did not. Murphy never wrote his name on any of the time checks because the time checks were given to me and I kept them a certain time and I would take them over to the office when I was going over there.

Q. (Mr. MARTIN.) Do you know who wrote either of these signatures on either of these checks?

Mr. JUREY.—I object because no foundation has been laid.

A. I do not know, no sir. (Referring to exhibits "D" and "B.")

Q. (Mr. JUREY.) Mr. Wells, it is possible that a man might board at your house without your recollecting him, is it not? A. Well, yes, it is possible.

Q. Do I understand you to say that Mr. Newman, the appellee, did not board at your place, or simply that you do not recollect that he boarded there?

A. This man Newman that lives on the hill never boarded at my place I am quite sure of that?

Q. Why are you sure of that?

A. Because the man has been pointed out to me before this some few months ago he was pointed out to me once passing, and I am very sure that he did not board there. To the best of my knowledge he never boarded there.

Q. In March or April?

A. In March or April, yes.

Q. Are you positive he did not?

A. Yes, I am positive that he never boarded there.

Q. You say that the time check that is signed by Newman that you just looked at, was not signed in your

presence and that your barkeeper took the check. Is it not possible that the man who signed that check might have escaped your notice, as you did not look after him particularly.

A. Well, I am positive that this man that lives on the hill never signed this check for this man Newman.

Q. I say, is it possible that as the man signed that check in the presence of your barkeeper and not in your presence, that he might have been there without your knowing it, as you did not deal with him personally. I say is it possible that he might have been there.

A. Well, it hardly seems possible to me after seeing the man on Sunday and having him called to my memory, it hardly seems possible that the man would board there without my knowing it.

Q. But still it would be possible, would it not, for him to board there a few days without attracting your notice if the barkeeper dealt with him instead of yourself.

A. It would not be possible for him to board there on the date of the 13th, because I can call to mind the men that were working on that bunk-house at that time; I am positive this man Newman was not there.

Q. Could not he have boarded there on the 12th and 13th is it not possible that he could?

A. I do not think it is possible that he could have boarded there because there was so few men boarding there at that time, there were not five men boarding there from the 13th to the 19th. There were four or five men, I would not say exactly, but I could swear positively who the men were in person.

Q. You swear positively that you did not see them in person?

A. I could swear who the men were in person—I can swear to all the men that were boarding there.

Q. If you saw them in person? A. Yes, sir.

Q. Now, are you sure that only five men boarded there during that time, between the 13th and the 19th?

A. I will not swear positively, no; but I think in the neighborhood of four or five men.

Q. Can you name the parties who boarded there during that time?

A. Well, I can—there was Solsberger and this man H. Newman, and I do not know as I can call them off all of their names.

Q. You do not pay very particular attention to the personnel of your men?

A. Well, I did not pay particular attention, more than I always do around there. I am always around at the noon hour, at the dinner hour.

Q. If you got your board from them, that was the particular thing?

A. That was the main thing that I was looking after.

Q. Did a man by the name of Barker board there during that time? A. Yes, I believe there was.

Q. Was there a man by the name of Waldron?

A. Yes, sir.

Q. And a man by the name of Crume?

A. I do not remember him?

Q. You do not remember him? A. No.

Q. A man by the name of Remington?

A. Well, there was seventy-five or a hundred of them—seventy-five anyway boarded there, but I could

not tell you whether they were all boarding there, and what time they were boarding there.

Q. Between the 13th and the 19th.

A. Between the 13th and the 19th I could not call to memory the men by hearing the names that boarded there in such a short space of time.

Q. Was there a man named Engle boarding there during that time.

A. I do not remember whether he did or not.

Q. A man by the name of E. T. Thurman?

Mr. MARTIN.—You could tell from the books the men who were there?

A. Yes I could tell all the men that were there.

Q. (Mr. JUREY.) Have you your books in court?

A. No, sir.

Q. Could you produce your books this afternoon, Mr. Wells? A. Not very well, I could not.

Q. A man by the name of Harris?

A. They must have boarded there some time or other.

Q. Boarded there between the 12th and 19th of last March? A. I could not say as to that.

Q. Antone Nichols, did he board there at that time?

A. I could not say, I do not know.

Q. G. Martinson?

A. I could not say whether he boarded there or not.

Q. J. A. Hanson? A. Hanson boarded there.

Q. And F. Feurst?

A. I do not remember about him.

Q. In between the 13th and the 19th of March?

A. I could not tell you.

Q. F. Timmon, did he board there during that time?

A. I could not tell you that either.

Q. And W. Sommers, did he board there?

A. I could not say as he did.

Q. Well, you had a good many men boarding with you at that time?

A. During the time that we were there, yes.

Q. I mean between the 13th and the 19th of March?

A. No. There was somewheres near four or five men.

Q. You are sure of that? A. Yes, sir.

Q. Do you not remember all of Murphy's men?

A. Yes, but they all did not commence to work between the 13th and 19th.

Q. You boarded all of his men that were working there between those dates.

A. I do not know whether I did or not.

Q. You do not know?

A. No. He had some men boarding at the restaurant.

Q. Did not you and Harben examine your books as to the men that boarded there between the 13th and the 19th of March?

A. He came over there a number of times from town; he did not, Murphy did.

Q. Did not you and he run over the names of the men that boarded there with you between the 13th and the 19th of March and compare the names on the list that he had of the men?

A. Well, there was no special date, we just ran over the names, but there was no special date—that they boarded between the 13th and the 19th.

Q. You are sure of that?

A. Yes, sir, there was no such a date. But we ran over the names.

Q. How far does your book go, to what date?

A. I do not know, I do not just remember.

Q. Was it to the 4th of April?

A. I do not just remember; we had it looking at it.

Q. Do you not recollect whether it stopped at the 4th of April or not? A. No, I do not remember.

Q. Did not you and Mr. Harben and Mr. Murphy, about two weeks ago in your back room, check off the names on your book with a list that Harben had?

A. All the checking that was done was checking off this man Newman's name clear down to the last. There was no particular date mentioned at any time, simply wanted to look at all the names.

Q. Did not they check your list of names with the list that they had there?

A. They checked all that he has got there.

Q. All that I have named?

A. Yes; well, I guess all you have named. He checked the names on the book, at any rate.

Q. Were these not the names of the men that boarded with you between the 13th and the 19th of March?

A. There were not that many boarding with me.

Q. You are sure of that? A. Yes, sir.

Q. I do not mean that the whole of these men boarded the whole of the time, but were not these men boarding with you at some time between the 13th and the 19th of March, the names that I have called?

A. No, sir.

Q. Not that many? A. No, sir.

Q. How many men were boarding at your house?

A. The most that ever boarded there at any one time?

Q. I do not mean at any one time, but boarded at your house on Murphy's work between the 13th and the 19th of March, how many different men?

A. I do not think there were more than five.

Q. During that time? A. Yes, sir.

Mr. MARTIN.—I object to the proctor cumbering the record; it is simply a repetition.

Q. Mr. Wells, your books would show exactly what men had boarded at your place, would they not?

A. Yes, sir.

Q. Will you produce these books this afternoon and testify after refreshing your memory from them?

A. I could not very well; there is nobody to watch the place, and my wife is sick and I do not want to leave her so long.

Q. Could not you produce them Saturday; I do not mean to put your books in evidence unless the appellee insists upon it, but simply to refresh your memory and testify as to how many men were boarding with you on Murphy's work between the 13th and the 19th of March?

A. I do not know. If my wife was so that I could get away, I might, but if she was not I could not.

Q. Then, do you decline to produce your books in court?

A. Oh, no, I would not say that I would not.

Q. Well, will you do so on Saturday?

Mr. MARTIN.—If you will pay his witness fees, I presume he will do so; there is no objection that I know of; I am sure I haven't any.

A. I will, provided that I can. If everything is satisfactory at home.

Q. That is the only answer you will make?

A. Yes, sir.

Q. Now, can you name the four or five men that you say boarded with you between the 13th and the 19th of March?

A. Well, no, I cannot, because there were so many that boarded there only for a short time; there was only one man that boarded there for four or five or six weeks. Mr. Solsberry, or a name something like that, and he is, I believe, the only man who boarded there for about four or five weeks.

Q. You got well acquainted with him?

A. Well, yes, I got well acquainted with him.

Q. Now, Mr. Wells, is it not a fact that you did not pay very much attention to the men who boarded there, but simply kept their time and got your pay?

A. I simply paid enough attention to that so that I knew that I got my pay. I would see them at the noon hour and at dinner time.

Q. You have kept track of them for the purpose of identifying them or anything of that kind?

A. No, sir, I did not.

Q. You left your business in the hands of your bartender frequently, and is it not possible that a man might board there two or three days or three or four days, and you not recollect it, providing there was a discrepancy in your accounts?

A. Well, it might be possible but it is not possible that the first four or five men that boarded there did, I would swear to all of them if they were present.

Q. Will you describe the man Newman who boarded with you in March?

A. I cannot describe him.

Q. Well, can you describe the man Newman who boarded with you in April? A. No, sir.

Q. But a man named Newman boarded with you in April? A. In April?

Q. Last April?

A. I had a man by the name of Newman on my books.

Q. For April? A. I think it was April.

Q. Do you recall the man to mind, his identity?

A. If he were present, yes.

Q. Do you without his being present, his identity?

A. Well, I do not think so.

Q. You could not describe him, then?

A. No, I do not think I could.

Redirect Examination.

Q. (Mr. MARTIN.) You say that you could pick out the four or five men that worked for Murphy when you first started there?

A. If they were present I could swear to all of them.

Q. And they were the parties that worked on the bunk-house, some of them, were they?

A. Yes, sir.

Q. Was Charles H. Newman, the appellee, one of this four or five, this Charles H. Newman that was injured?

A. No, sir.

Q. If that signature on Appellant's Exhibit "E" was signed in your presence I will ask you if it was signed by some other person than Charles H. Newman, the appellee?

Mr. JUREY.—I object for the reason no foundation has been laid and the witness testified he never saw him sign it.

Q. I will ask you if that was signed in your presence, Mr. Wells, if you know whether or not Charles H. Newman, the appellee, the man who was injured, signed that?

Mr. JUREY.—I object to the witness testifying because he stated it was not signed in his presence.

A. Well, of course, as for that, if this man Newman signed it, the man who was injured, I could swear to that.

Q. That is what I mean, did he sign that, the man that was injured, in your presence?

Mr. JUREY.—I renew my last abjection.

A. No, sir, he did not.

Q. (Mr. JUREY.) Do you know Charles H. Newman's signature? A. I do not.

Q. How do you know he did not write that?

A. Not in my presence, I say.

(Testimony of witness closed.)

Mr. A. L. WEAVER, a witness called on behalf of the appellee, being duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. Are you acquainted with Charles H. Newman, the appellee? A. Yes, sir.

Q. Known him for some time? A. Yes, sir.

Q. Is your place near where Murphy's men were putting the bunk-house in? A. Very near.

Q. Did you see the men that were putting the bunks in? A. I did.

Q. In March? A. I did.

Q. I will ask you if Charles H. Newman assisted in putting these bunks in? A. He did not.

Q. I will ask you whether he is in a crippled condition, if you know? A. At the present time?

Q. Yes.

A. He is to the best of my knowledge and belief.

Q. I will ask you, if you know, whether or not you think he will ever be able to perform any manual labor?

Mr. JUREY.—I object for the reason that no foundation has been laid for such testimony. That testimony requires an expert.

A. I do not think that he will for a good many years,

Q. Does he have the appearance of a man that would be able to perform work?

A. Not very soon, not for years, no.

Q. Does he have the appearance of being crippled?

A. He certainly is crippled.

Cross-Examination.

Q. (Mr. JUREY.) What is your business, Mr. Weaver?

A. Well, at the present time halibut fishing. At the time that Newman was supposed to be on these bunks I was with the Oceanic Packing Company as superintendent.

Q. You had nothing to do with Murphy's contract?

A. Nothing whatever.

Q. You say that Charles Newman, the appellee, did not work on this bunk-house?

A. He did not work there.

Q. How many men worked on this bunk-house?

A. Four or five. I was in there two or three times while they were at work, and sometimes there was four

or five of them hammering away, and sometimes two or three, but I saw them each day. My business was right there and I saw them. I was at that time with the Oceanic Packing Company, and I saw them every day.

Q. What days were they working on this bunk-house?

A. What days?

Q. What days of the month?

A. I could not tell you exactly the day of the month, but sometime in March.

Q. You do not recollect the exact date?

A. No, I could not recollect the exact date.

Q. Now, do you know all the men who worked on this bunk-house? A. I knew none of them.

Q. Did you pay particular attention to who was working on them?

A. Well, I went in and talked with the men and asked them what they were going to do, and they were passing remarks what they were doing it for, and why the bunks were being built.

Q. You had no interest in the bunk-house?

A. None whatever.

Q. You had no particular reason, other than that of curiosity to look after them and talk with them?

A. Mere curiosity. At that time I was connected with the company and naturally was interested in any proceedings going on on our property, and out of curiosity to know that there was no harm being done, I was in there.

Q. Do you know how many days they were working on the bunk-house?

A. Yes, I remember; three or four days.

Q. You have not a very distinct recollection as to the number of days? A. Not the number of days.

Q. Did you ever go inside of the bunk-house after the first day?

A. Yes, sir, I was in there two or three times.

Q. How far is your place of business from the bunk-house? A. A hundred feet.

Q. You say you knew none of the men working there?

A. They were strangers to me.

Q. How long have you known Mr. Newman?

A. About two years now.

Q. Well, were you working for the Oceanic Packing Company and connected with it in April, 1899?

A. April, yes I was with the company.

Q. At the time the brigantine "Blakeley" was injured in the collision with the "Homer"?

A. I was on the ship at the time—not at the exact time of the collision, but I was connected with the ship; I was a member of the ship's crew at that time.

Q. Did you testify? A. I did not testify.

Q. Mr. Weaver, you say Mr. Newman is a cripple, how do you know it.

A. He has been in the warehouse quite often during my connection there, since his injury, since he has been able to get around and I shook hands with the man and occasionally would slap him on the shoulder and each time he would evidently feel a shock of pain, and once in awhile he told me to be easy. And judging from that fact the man certainly is in a pretty bad condition. It gives him pain if he is shook up, and I have watched him around the warehouse often in there and he could not

bend over or take hold of anything heavy, or anything of that sort.

Q. Well, would he attempt to take hold of anything heavy?

A. Occasionally he would undertake to lift an ax or bend just a little and he would complain, and he never could do it.

Q. You never examined him? A. Oh, no.

Q. Then, you simply use your own opinion from what you have seen and what he has told you?

A. Yes, and from what I have seen of him.

Q. From what you have seen and what he has told you?

A. Yes, altogether.

Q. When did you say you quit the Oceanic Packing Company?

A. The first of May, the first day of May.

Q. Then, you have seen Newman around quite frequently?

A. No, not lately, not so frequently lately as I did when I was connected with the company. I saw him nearly every day, at least three or four times a week at that time.

Q. When was that? A. In April and in March.

Q. He was down around there at that time a good deal?

A. Two or three times a week certainly.

Q. He was down on the wharf? A. Yes, sir.

Q. Your place is down on the wharf?

A. Yes, sir; he has a little building along next to the packing house and he was usually in there, and he would generally come in and see me.

Q. Did you see him much prior to that time, prior to April? A. Yes, sir.

Q. What time? A. In March.

Q. Prior to March?

A. I would not be positive as to when he did get out, but I am quite sure that he was out in February.

Q. In February? A. Yes, sir.

Q. Do you think it was earlier than that?

A. I could not say how much earlier than that, if at all.

Q. Was it along in the early part of February?

A. I think the middle of February at the time that I saw him out.

Q. He was down on the wharf then? A. Yes, sir.

Q. Was walking around, no one assisting him?

A. With two canes. He had assistance to get up the hill the first time that I saw him someone assisted him up the hill.

Q. Who was it that assisted him?

A. I could not tell you now, I think it was Judge Coombs, but I would not be positive who it was.

Q. Do you know Mr. Michael Kelly? A. No, sir.

Q. Were you with the Oceanic Packing Company about the 23d of April, last April.

A. Yes, sir.

Q. Do you recollect anyone coming there about the 23d of April and inquiring for Mr. Newman?

A. I had several inquiries for him.

Q. About that time, do you recollect some called for Mr. Newman and asked after Newman—Newman's shack is right near your place? A. Yes, sir.

Q. Do you recollect calling out to Newman to see if he was there? A. I believe I did.

Q. About the 23d of April?

A. Yes, I think I did.

Q. And Newman was in his shop at that time?

A. I remember calling out to him once, it was in April, about the latter part of April, and asking him if he was in there.

Q. He was there?

A. To the best of my recollection he was, and he walked in the adjoining shed.

Q. Did he frequently come down to his shop during the month of April?

A. In April he was there at least three times a week, not quite so often in March.

Q. Do you know of his coming over to Seattle at any time?

A. Yes, I saw him once or twice when he came off the boat.

Q. What time was that?

A. This was in April.

Q. Did you see him coming off the boat prior to that time? A. No, I did not.

Q. You do not recollect that?

A. No, sir.

(Testimony of witness closed.)

CHARLES MASCOLIN, a witness called on behalf of the appellee, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) State your name?

A. Charles Mascolin.

Q. Where do you live? A. At West Seattle.

Q. Are you acquainted with Charles H. Newman?

A. Yes, sir.

Q. Did you ever do any work for Charles H. Newman?

A. Yes, sir.

Q. What was it?

A. Painting a boat, a steamer on the wharf.

Q. What did you do to the boat?

A. I painted both the boats.

Q. Painted two? A. Yes, both of them.

Q. Who assisted you in painting the boats, if anybody? A. No, sir; the boy helped me.

Q. The boy that was here? A. Yes, sir.

Q. That is, Mr. Craemer?

A. The young fellow there, yes.

Q. Did Charles H. Newman do any painting on that boat?

A. No, sir, nothing; I done it all myself.

Q. He paid you for it, did he?

A. Yes, sir.

Q. Did you finish the job? A. Yes, sir.

Q. Did Charles H. Newman look to be in a crippled condition or hurt?

A. I think he is crippled, I suppose he is or he would not ask me to do that job, that is all.

Q. Have you ever seen Newman do any work?

A. No, sir.

Q. Can he do any work?

A. No, sir. I am right on the waterfront there and I did not see him do anything.

Q. Did you see the men putting the bunks in the bunk-house for Murphy's men? A. No, sir.

Q. Where did Murphy's men sleep?

A. I could not state, I never seen the men there.

Q. Did you see some men working there putting in some bunks for Murphy's men to sleep in there in March?

A. No, sir.

Q. Did you see other men working there on the bunks?

A. No, sir. I did not take any notice of that; Murphy was there, I know that, for quite a while.

Q. Do you know whether Charles H. Newman was working on these bunks?

A. No, sir.

Q. If he had been working there you would have seen him?

A. Certainly, I could not help but see him.

Cross-Examination.

Q. (Mr. JUREY.) What boats did you paint for Mr. Newman?

A. I painted both boats.

Q. What boats were they?

A. I do not know their names.

Q. What kind of boats were they?

A. A sloop and a steamer.

Q. Were these the only boats that he had there?

A. That is all.

Q. You painted them both?

A. Certainly.

Q. Did you do all the painting?

A. Yes, sir.

Q. All of it?

A. All of it.

Q. Did Craemer help you any?

A. No, sir.

Q. He did no painting?

A. No, sir, I done it all myself.

Q. Then, if Craemer says he did any painting he told what was not true? A. I done it all myself.

Q. Did you paint them all in one day?

A. I took my time.

Q. How long did it take you to paint them?

A. I could do it in one day anyhow, but I painted them.

Q. How many different times did you paint them?

A. Twice.

Q. When did you paint them?

A. It was somewheres close to April, I think.

Q. Do you know when you painted them?

A. Well, no.

Q. Do you know when you painted the boats?

A. Yes.

Q. What days?

A. What date, I don't know. I don't know what date I was born.

Q. What month did you paint them in?

A. We can find that out all right enough.

Q. What month did you paint them in?

A. Some time in April.

Q. April?

A. I kept no time myself.

Q. Some time in April?

A. Some time like that.

Q. You do not remember the date?

A. No, I don't know the day I was born either.

Q. But you were painting them on two different days?

A. Yes, I painted two different days.

Q. You commenced painting one day and then you left?

A. I took care of the boat, the whole business?

Q. When did you finish, the next day?

A. I finished in two days.

Q. Did you finish the painting the next day after you commenced? A. I painted right there.

Q. You do not remember when you painted them?

A. I was not there at all, I was somewhere else.

Q. When you painted them?

A. Yes, I am right there.

Q. How do you know that someone else did not paint some while you were away?

A. That anybody else did?

Q. They could not do it? A. No, sir.

Q. Why could they not?

A. I was by there myself.

Q. You were not there while you were away?

A. I painted them.

Q. Did you leave the boat while you were painting?

A. I left my house now and I am right here.

Q. Did you leave the boats while you were painting them? A. Yes, sir.

Q. How do you know that someone else did not paint while you were away? A. Nobody—

Q. Why could they not?

A. No, sir, they could not do it because I am right there, I sleep in the house right back there.

Q. You said that you were away from the boat while you were painting? A. No.

Q. Stayed there all the time?

A. Stayed all night. I was right there.

Q. Did you leave the boats from the time you commenced painting until you finished them?

A. Yes, that is exactly right. The same old place yet.

Q. How large is the steamer that you painted?

A. You ask that question?

Q. Is it a big boat? A. A small boat.

Q. How many coats of paint did you put on it?

A. Two coats.

Q. All over it? A. All over it.

Q. About how long is the steamer?

A. It is pretty good.

Q. A very good sized one, is that right?

A. That is correct, that is right. It is big enough to keep you awake.

Q. How large was the other boat?

A. A small one, it was a yacht.

Q. About how long was it?

A. I do not know, I never measured it.

Q. Pretty good length was it?

A. Well, yes, that is all right.

Q. How many coats did you put on that?

A. One coat.

Q. Just one coat? A. Yes, sir.

Q. Were there any more coats put on it?

A. Yes, well, we gave it one coat the year before—is that all you want?

Q. After you finished painting these boats you left them, didn't you? A. No sir, right there.

Q. Stayed right there? A. Yes, sir.

- Q. Night and day? A. Yes, sir.
- Q. Never left them? A. No, sir.
- Q. Cooked and ate there? A. Yes, sir.
- Q. You never left the boats at all? A. No, sir.
- Q. How did you get over here?
- A. I could not help it, I am just—
- Q. You did not leave the boat until after you finished painting them? A. Yes.
- Q. How long did you stay there?
- A. I am right there.
- Q. There yet? A. Yes, sir.
- Q. Now, you did all the painting in two days?
- A. Yes, sir.
- Q. How much did you do the first day?
- A. Have you got a brush? I am with you on painting.
- Q. How much did you paint on these boats the first day? A. Everything is correct.
- Q. How much? A. How much can I paint?
- Q. How many hours did you paint the first day?
- A. Well, I took my laborer's wages.
- Q. How many hours did you paint? How many hours did you work?
- A. I painted before the tide came in.
- Q. How many hours.
- A. That is just about a day's work.
- Q. You painted how long.
- A. On this work?
- Q. The first day? A. Yes.
- Q. How much did you paint the next day?
- A. Just about a day's work.
- Q. Then you painted both of these boats in two days?

A. Yes, sir.

Q. You know Mr. Newman very well, do you not?

A. Yes, sir.

Q. You and he are very good friends?

A. Yes, sir.

Q. What is your business? A. Fishing.

Q. You are a fisherman?

A. Sometimes I am idle, I tackle anything.

Q. You live over at West Seattle? A. Yes, sir.

Q. How long have you known Mr. Newman?

A. Ever since he came in.

Redirect Examination.

Q. (Mr. MARTIN.) You live in a bunk-house right next to the boat? A. Yes, sir.

Q. And these boats have been there all the while, these boats of Newman? A. Yes, sir.

(Testimony of witness closed.)

J. A. COX, a witness called on behalf of the appellee, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live, Mr. Cox?

A. Over in West Seattle.

Q. Are you acquainted with Mr. Charles H. Newman, the appellee in this case?

A. I have seen him a few times.

Q. You were working on the street-car grade over at West Seattle in March, were you not?

A. Yes, sir.

Q. You were foreman there for Murphy?

A. Yes sir.

Q. I will ask you if this man Charles H. Newman, the appellee, worked on that grade there from the 12th to the 19th of March?

A. You mean that man that got hurt on the brig "Blakeley"?

Q. Yes, sir.

A. No, sir, he never worked there while I was there.

Q. You were in charge of the men there between the 12th and the 19th of March, were you not?

A. From the 15th to the 20th.

Q. Of March? A. Yes.

Q. And you are positive that he did not work there then?

A. No, he did not work there at that time.

Q. Were you in charge on the 4th, 5th, 7th, 8th, and 9th of April? A. No, sir.

Q. Now, is there a man working there who gave the name of H. Newman?

A. Well, there was a man, I think—not H. Newman, I have forgotten— (Witness examines paper.) This is the only name that I could get, it was "Vars" or "Varrs."

Q. Did you put the names down of the men that were working there?

A. I got some of them on the first day; he was the man I had the first day.

Q. Well, did he tell anybody that his name was Newman? A. Not that I am aware of.

Q. Was not there some man working there who gave his name as Newman who had some other name?

A. Well, that I don't know about, I kept the time but one day.

Q. This fellow that had the name of Varrs gave his name as Newman too, did he not?

A. No. I did not get the name of Newman. It was either Varrs or H. Nears or Varris, I think I made a mistake, Varris and Nears are very near the same.

Q. Was there any other man working there who pretended to be the man that got hurt on the brigantine "Blakeley"?

A. No, sir, not that I am aware of.

Q. You are positive that this man who got hurt on the Brigantine "Blakeley" never worked for you?

A. No, sir, I never seen the man there at all; I saw him down on the county road at the time that I was working for Cooper, that was in April.

Q. If this man, Charles H. Newman, that got hurt on the "Blakeley" had worked there you would have known it, would you not?

A. Oh, yes, I would have known it, sure.

Q. You were foreman there on that grade?

A. Yes, at that time.

Cross-Examination.

Q. (Mr. JUREY.) How long have you known Mr. Newman, Mr. Cox, the appellee?

A. Since some time in April. I think it was somewheres about the 13th, along about the 23d somewheres about that time in April.

Q. You did not know the appellee, Charles H. Newman, prior to that day?

A. No, sir, not prior to that date.

Q. How many men had Mr. Murphy working for him at that time? About between the 13th and 19th of March?

A. I think he must have had somewheres in the neighborhood of ten or twelve; they were kind of commencing. There might be a mistake in a man or two of course, I do not know for sure. There were some quitting and then we got some new men.

The men were all working right in one place on this grade, or were they scattered out?

A. All the men that I had charge of were working pretty close together.

Q. Mr. Murphy was around a good deal during the time, was he not? A. Yes, sir.

Q. During the month of March?

A. Yes, sir, he was around sometimes once a day and sometimes twice, and sometimes three or four times.

Q. Where did Murphy's men board, that were working with him?

A. Well, I think some told me they were boarding at the hotel and some were boarding at the restaurant.

Q. Do you know where they boarded?

A. I do not know for sure where they all boarded.

Q. In March? A. Yes, in March.

Q. Do you know where they boarded in March?

A. I think some boarded at the hotel, I do not know.

Q. What hotel? A. West Seattle Hotel.

Q. Did any of them board in the restaurant in March? A. Well, I do not know for sure.

Q. The hotel you refer to is run by Mr. Wells?

A. Yes, that is one.

Q. How many of Murphy's men boarded with Wells between the 13th and the 19th of March.

A. That I do not know, I do not know how many boarded there, some boarded there, according to what I heard said.

Q. You do not know how many?

A. No, sir, I was not down there at all.

Q. When was the first time that you saw Newman?

A. I think between the 13th and the 20th of April.

Q. Where did you see him?

A. On the county road, the West Seattle, county road.

Q. What was he doing there?

A. Well, he was leaning up against the railing there, he had a stick and was standing there talking.

Q. How long was he there, do you know?

A. Oh, he was there, I guess, for a half an hour, or so, I did not pay much attention, I was working or building the road and I did not pay much attention.

Q. Were you introduced to him then as Newman?

A. Yes sir.

Q. Can you name the men that you had working on Murphy's grade during the time between the 13th and the 19th of March?

A. No, I could not do it. I did not commence until the 15th.

Q. You do not know who worked for him on the 12th, 13th, and 14th? A. No, sir.

Q. Can you name the men who were working for him on the 15th, 16th, 17th, 18th, and 19th?

A. I think some old hands quit and they put on a couple of new ones; but I do not remember the names.

I have got the names of seven or eight that worked there the first days.

Q. I understand you only kept the time the first day?

A. That is all.

Q. And that you paid no attention to the time?

A. No, sir, I did not. Mr. Murphy kept the time himself, I did not bother.

Q. You simply looked after the actual grading?

A. Yes, sir.

Q. Now, can you name the men who worked between the 15th and the 19th?

A. The 15th and 19th?

Q. Yes. A. No, sir, I cannot.

Q. They were constantly changing men from old to new men, were they not?

A. I think while I was on the job we had three or four new men and there were some of the old hands quitting.

Q. Did you pay particular attention to who was working for him, or how long they worked?

A. How long they worked?

Q. Or did you simply look after the actual grading?

A. When they were quitting they went to Murphy and got their money.

Q. You had nothing to do with that?

A. No, sir.

Q. You looked after the actual grading?

A. Yes, sir. That is, the grading and clearing.

Q. No concern of yours who he employed or how long they worked, or when they quit?

A. No, sir, it did not make any difference.

Q. You paid very little attention to them?

A. No, I did not pay much attention to them particularly. When they got tired they quit and went and got their money. They would send up some other men and put on the work, and we would start them to work whenever they were sent up.

Q. Can you recollect the changes or description of the men who worked there between the 15th and the 19th of March? A. I could if I saw them.

Q. You could if you saw them?

A. I believe so.

Q. It is pretty hard to remember them?

A. I know it is, but if I could see their faces once I would know them again.

Q. Mr. Cox, did you not go up to Mr. Newman's house at the instance of Mr. Gardner to see if you knew the man?

A. Yes, sir.

Q. Did not you tell Gardner you had never seen the man before? A. No, sir, I did not.

Q. What did you tell him?

A. I told him I had seen Newman before, and that that man never worked on that work while I was on there.

Q. You are sure that you did not tell him that you had never seen him before?

A. I am sure that I told him that I had seen Newman before.

Q. That is, the time that you saw him on the road that you refer to?

A. Yes, sir. That was in April.

Q. Why did you go to the house if you already knew that Newman had not worked there?

A. Well, the reason was that Murphy claimed he had a man by that name on the job at the time that I was working on it, and I says, "I do not know, I have heard the name, the name is familiar, but whether he was on that job or not I do not know for sure." And I says, "in this case I am going up to see if the man ever worked there or not while I was on it."

Q. But you say you already knew him at that time?

A. I knew the man by sight.

Q. You knew him by sight? A. Yes, sir.

Q. And still went up to the house at Gardner's request to see if you knew him or not?

A. Well, Murphy claimed he worked on the work, and I wanted to see for sure if he did or not.

Q. Notwithstanding you had seen him before and knew him? A. Yes, sir.

Q. When did you quit working for Murphy?

A. Somewheres around the 20th of March. I did not work for him afterwards.

Q. You quit bossing for him?

A. Yes, sir. I done a little work after that, I think in April some time. I fitted a saw for him and put in a couple of ax handles; the bill came to a dollar.

Q. There was a little misunderstanding between you and Murphy, was there not?

A. No, sir, there was no misunderstanding whatever.

Q. Why did you quit?

A. Because he told me he had another job over in town when he hired me; and he said he wanted a man

to look after that work. He said he and his partner had another job over in town and he was looking after some work in Seattle, and he had to look after the sewer, and he wanted a man to look after his other business.

Q. Did he give you that job after you got through at West Seattle? A. What job?

Q. The one at Seattle.

A. I was not to work in Seattle at all.

Q. You say when you quit working for Murphy at West Seattle that he had a job over here?

A. No; the reason that I quit working for him in West Seattle—he said that he had a job over here, looking after the sewer, he said he and his partner had a job over here, and his partner was sick and he wanted to be over here looking after the sewer, and that was the reason that he hired me to look after this job over there.

Q. When you quit him over there, he did not tell you that he had another job for you? A. No, sir.

Q. When did you quit working for him?

A. I quit working for him—that is, quit working for him by the day. Of course I fitted a saw and I put in a few axe handles for him.

Q. He put in another foreman.

A. I do not know whether he did or not.

Q. Did Murphy discharge you? A. Yes.

Redirect Examination.

Q. (Mr. MARTIN.) Murphy and this detective Gardner went over there and tried to get you to testify that this man Newman that was injured on the “Blakeley” worked on the grade, did he not?

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TESTIMONY

Taken in U. S. Circuit Court of Appeals.

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
Appellant,

vs.

CHARLES H. NEWMAN,
Appellee,

AND

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
AND J. S. GOLDSMITH AND F. M.
GRAHAM, STIPULATORS, ETC.,
Appellants,

vs.

CHARLES H. NEWMAN,
Appellee.

VOL. II

(Pages 257 to 480 Inclusive)

Appeal from the District Court of the United States for
the District of Washington, Northern Division.

FILED

AUG 24 1900

A. That is what they thought, that he worked on the grade, and Murphy told me so.

Q. And tried to get you to think that he had worked on the grade?

A. They did not try to get me to think he had worked on the grade, but they thought that he had worked on the grade.

Q. That is what they said to you? A. Yes.

Q. And they claimed to you that he had worked on the grade? A. That is what they claimed.

Q. Both of them? A. Yes, sir.

Q. And for that reason they urged you to go up and see Newman, and see if you would not testify that he had worked on the grade?

A. That is the reason that I went up to see him, to see if I ever saw him on the grade.

Q. At their request? A. Yes, sir.

Q. You told them that he did not work on the grade?

A. I told Gardner the man never worked on the grade while I was on it.

Q. Notwithstanding that fact he tried to get you to testify that he had worked on the grade?

A. Well, he kind of said I might be mistaken in the man, and I told him I was not mistaken in the man, but when I saw the man I knew him.

Q. (Mr. JUREY.) You live at West Seattle, do you not? A. Yes, sir.

(Testimony of witness closed.)

Mr. C. N. COOPER, a witness called on behalf of the appellee, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) How long have you lived at West Seattle, Mr. Cooper?

A. A little over ten years.

Q. Are you acquainted with Charles H. Newman?

A. Yes, sir.

Q. How does Newman stand in that community?

A. He is a very respected man by everybody in West Seattle.

Q. Considered a perfectly honest man?

A. Yes, sir.

Q. Industrious man? A. Yes sir.

Q. Was he usually engaged at work prior to the time of his injury?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. He was a ship carpenter?

A. Yes, sir; he was a ship carpenter.

Q. Do you know whether there has been much work in that line lately, this last year?

Mr. JUREY.—I object as incompetent, irrelevant, and immaterial.

A. Before he was hurt he was engaged all the time.

Q. Do you know what kind of a workman he was considered.

A. He was considered a first-class workman; a first-class ship carpenter. They came for him from the "Blakeley" and "Ballard" and all over, and they claimed that he was a first-class ship carpenter.

Q. Have you seen Newman since the time he was injured? A. Yes, sir, I have.

Q. Have you visited at his house?

A. Quite often. I live right close by him and I saw him once a week, as much as that anyway.

Q. Have you had an opportunity to observe his condition and appearance? A. Yes, sir.

Q. I will ask you to state whether or not he appears to be crippled?

A. Yes, sir, he appears to be crippled.

Q. To what extent?

A. Well, to my best judgment he is crippled for life.

Q. Is there anything about him to indicate that?

A. Yes, sir.

Q. What do you see about him to indicate that he is a cripple for life?

A. Well he was hurt in the back and laid up for six or seven months on a bed and had to have a man to turn him over. He was not able to turn over himself; and he employed a man that lives close by there to turn him whenever he would want to turn over in bed; and he would have to turn him over.

Q. How was he required to lay in bed?

A. Well, on his back and on his side mostly. When he wanted to get on his side he had to be turned over from one side to the other so that he could lay on the other side.

Q. You have seen him since he has been able to get out of bed?

A. Yes, sir. I think it was along in February or March, or somewheres there when I first saw him. I think it was about that time when he first was able to get on his clothes with the aid of some person. I used to go in there myself on Sunday. Most every Sunday I

would go in there and see how he was. He got so that he could get out of bed, and finally he got so that he could sit in a chair, and I was in there and I seen him; and he showed me that he had some sort of a steel waist up and down the body, and by the aid of that he could sit in a chair, and he could raise himself up by his arms like that. (Showing.)

Q. Do you know whether or not he can get up at the present time without the aid of his arms on a chair like that (showing)?

A. Well I never seen him get up only in that way. I have seen him there Sunday for the last two or three months and he always got up in that way, with a cane and raised himself up, and sometimes he could straighten up and could walk around, but you could see that there was something the matter with his back, that he had action in his hips, and it seemed that he could not turn his shoulders around, and he had to be perfectly straight when he walked.

Q. Could he bend over or bend his back?

A. No, he could not bend his back, I do not think; I never seen him try to bend his back at all, he could bend his hips.

Q. At the hip joint? A. Yes, sir.

Q. That is, at the joint of his legs, the pelvis? Well, he could work them on a kind of a hinge?

A. Yes, he could work that way.

Q. About the only motion that he had?

A. That is the only motion that I ever see him have.

Q. State whether or not you have ever seen him perform any work on the grade over there?

A. That would be an utter impossibility for him to perform any labor like that.

Q. State whether or not you know of him boarding down at Wells' in March or April?

A. I do not think that he did. I was right there on the wharf every day finishing up the road, and building my building there and I never saw him down there.

Q. Did Mr. Murphy's men go by where you were working to their work?

A. Yes, sir, they passed right by my work every day.

Q. Did you ever see Newman going by there to work?

A. No, sir.

Cross-Examination.

Q. (Mr. JUREY.) Now, how close did you live to Mr. Newman, Mr. Cooper?

A. Just about a block and a half, I think.

Q. A close neighbor?

A. Yes, sir, a close neighbor.

Q. You and Newman and your families are very friendly? A. Always have been friendly.

Q. They are your friends?

A. Ever since they have been in West Seattle, he has been there about five years, I think.

Q. Now, you say you called at Newman's house about once a week, and usually on Sunday?

A. Yes, it might not have been every week, but I was in there and my wife was in there about once a week.

Q. Now, you say for the first six months after he was hurt that he was compelled to lie on the flat of his back but he could turn and lay on each side with help?

A. Yes, sir.

Q. Could not move without help?

A. No, sir, he could not.

Q. And did you see him suffer pain in being moved that way?

A. I suppose he did, I did not see him suffer. I suppose he suffered great pain. I know the man that attended to him said that he had to be moved very quick because it hurt him very much when they moved him. They had to get under him this way with an arm under his shoulder and under his hips and make a quick turn, just as quick as they could and get him over on his side.

Q. Now, when did you say he was first able to get up?

A. Why, it was along about the first of March, or it might have been in February, the last of February or the first of March that I saw him; he got so that he was able with the aid of his wife he could dress himself.

Q. It was after that time that you say he was able to get out? A. Yes, sir.

Q. You do not know that he was not able to get out before that, do you?

A. No, sir, I know that I was in there occasionally, but he was not out.

Q. When was the first time that you saw him out of doors, Mr. Cooper?

A. Why it was, I think, some time in the first of March, sometime in March. It was about the middle of March, I think, when I first saw him out of doors. I was down there about the first of March and one Sunday morning he was sitting there in a chair, and I asked how he was getting along. "Well," he said, "he was better

than he had been and improving a little, and I can walk around here," he says, "and if I could straighten up," he says, "I could walk around." And he raised himself up with his hands, like that (showing), and he got up and he walked around a little, and I told him I thought that he was—

Q. You never made any examination?

A. No, I never made any examination.

Q. You simply formed an idea from what you saw, and what he told you? A. Yes, sir.

Q. And what others told you?

A. That is all.

Q. Now, when did you first see him down on the wharf and on the beach?

A. Well, it was some time in March, I do not know exactly.

Q. Some time in March that you saw him down on the beach. Do you know how he got down there?

A. Why, he walked down there.

Q. That is quite a steep hill that you have to go down to the beach, is it not?

A. Yes, sir, it is quite a steep hill.

Q. Anyway that you go? A. Yes, sir.

Q. And the man lives up on top of the hill, on top of the bluff at West Seattle? A. Yes, sir.

Q. Now, how often have you seen him down on the beach at the wharf?

A. Well, I do not know, I saw him once there, I think once or twice there. He was down there and he walked out to where I was working on the building, where I was building my building there.

Q. What building?

A. I was putting up a store there on the waterfront.

Q. You spoke of seeing Murphy's men go to work while you were working on the street grade.

A. Yes, sir.

Q. What work were you doing?

A. I was finishing up the planking of the road, that is, from the ferry down to the Cove, about a mile and a half of plank road. I was finishing up the last end of it right by the ferry when Mr. Murphy was commencing his street grading there, and Murphy came to me and he wanted to know about whether I knew of a man that he could get to be foreman, and I had a man by the name of Cox.

Q. When did you finish that planking that you refer to?

A. Well, it was the last of February—no, it was in March I think that I finished that; I think about the middle of March that I finished it. I do not know exactly but it was some time in the fore part of March that I finished it.

Q. You had finished the work that you were doing at the time that you saw Murphy's men passing by?

Q. Yes, sir. As soon as I got through with that, then I went to work on my building. I was right there on the waterfront every day.

Q. You had no interest in Murphy's work?

A. No, not at all.

Q. Nor in the men that he employed?

A. No, not at all.

Q. And any notice that you took of them was simply casual or as a matter of course.

A. Yes, sir.

Q. You were not keeping check for him on any of them?

A. No, sir.

Q. You simply did not see Newman with the crowd that went by?

A. No, sir; if he had been with the crowd I probably would have seen him.

Q. You did not see him?

A. I did not see him at all.

Q. There were ways to get to the grade, were there not, without passing along there?

A. Well, not at that time I do not think, because all of Murphy's men passed there every morning that I was to work. I was there to work before he came there with his men and they passed right down past me there. I was at work on my building, putting up the frame.

Q. Now, it is possible for men to get there in other ways—all that country is open and clear?

A. Yes.

Q. Might be inconvenient but it could be done?

A. Yes, it is possible that they could get through some other way.

Q. And you say you think it is impossible for Mr. Newman to have worked on that grade?

A. I think it was impossible, sir, for him to work on the grade.

Q. You, of course, do not know whether he did or not?

A. I was not on the grade to know.

Q. You made up your mind or opinion that it was im-

possible for him to work there from the fact that you believed that his physical condition was such that he could not?

A. Yes, sir.

Q. Now, you speak of a steel jacket that Newman wore? !

A. Yes, sir.

Q. Can you describe that a little more particularly?

A. No; only I felt here, I could feel the steel jacket, it was under his outside clothes.

Q. You felt it through his clothes?

A. Yes, sir.

Q. What kind was it, something like a corset, with ribs or something of that kind?

A. Yes, sir, something like that; a brace that held him from here right up to here (indicating).

Q. It was not a solid steel jacket or anything of that kind?

A. I do not know, I never seen it.

Q. You could tell by feeling.

A. It was a stiff brace.

Q. I mean it was not solid all around as one piece, but simply like a corset?

A. I do not know, I just felt of it here (showing). It was a stay, you know, someway.

Q. It seemed to be hard but you could not tell whether it was steel or not?

A. No, I could not tell you.

Q. You do not know, of course, who told him to wear it, except what he said?

A. That is all.

Q. Mr. Cooper, West Seattle is a little village, is it not?

A. Yes, it is a little village.

Q. And nearly everybody knows everybody over there?

A. Knows everybody's business.

Q. And you stated, I believe, that Newman was very popular over there?

A. Well, he is very much respected by everybody.

Q. Everybody likes him?

A. He has been a very nice man ever since he has been over there, I never heard anybody speak a word against Newman.

Q. People that live over there and know him are not very liable to say anything against him and against his interest?

A. Certainly not.

Q. They would not volunteer any information or assistance that would militate against his interest?

A. I do not think that they would.

Q. Do you know of his coming over to Seattle at any time since he was hurt?

A. I never saw him come over to Seattle since he was hurt.

Redirect Examination.

Q. (Mr. MARTIN.) If the people over there respect Mr. Newman, I did not understand you, Mr. Cooper, that that would prevent them being subpoenaed and coming over here and swearing to the truth?

A. No, it would not.

Q. The reason they respect him is because they know him to be an honest, hard-working man?

A. Yes, sir.

Q. And he is well liked?

A. Yes, a hard-working man; a man that is respected very much over there by everybody. I never heard of him ever having any trouble since he has been there, and he has lived there for about five years.

Q. Do you know Neil Murphy?

A. I just knew him since he has been over there on that grade, that is all. I never saw him before, I got acquainted with him when he first came over there. Because I was building that road there at the time when he came there and went to work.

(Testimony of witness closed.)

At this time further proceedings were adjourned until one o'clock P. M.

Afternoon Session.

Continuation of proceedings pursuant to adjournment.
1 o'clock P. M.

Present: William Martin, Esq., of proctors for appellee; John F. Jurey, Esq., of proctors for appellant.

Mr. J. T. JENKINS, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live, Mr. Jenkins?

A. West Seattle.

Q. How long have you lived over there?

A. I have lived there about nine years, or a little better.

Q. Are you acquainted with Charles H. Newman?

A. Yes, sir, I know him.

Q. The appellee, the man that was injured on the brigantine Blakeley?

A. Yes, sir, I know him well, I live close by him.

Q. Did you call on him, and if so, how frequently, since the time he was injured?

A. Oh, I have called on him several times; I could not tell how many times. I called on him in the hospital while he was there after he was injured two or three times; and being a neighbor close by there I often used to go in there.

Q. How does Newman stand over there in that community, Mr. Jenkins?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial.

A. He stands as a good citizen there, as far as I know. I never heard anything to the contrary.

Q. What was his business, do you know?

A. He was a ship carpenter.

Q. Was he employed at that trade constantly before he was injured, do you know?

A. Well, I know that he worked at that ever since, and nothing else. I used to do some repairing over on the other side, and I have seen him working there frequently.

Q. What is his condition at the present time, Mr. Jenkins, as to his appearance?

Mr. JUREY.—I object for the reason that no foundation has been laid for such testimony.

A. Well, the man is pretty well in appearance, but he is a cripple.

Q. Does he appear to be able to perform manual labor?
A. Not in my opinion.

Q. You saw him while he was in bed at his house after he had been taken from the hospital?

A. Yes, sir.

Q. Frequently?
A. Yes, sir.

Q. State to what extent, if you know, he suffered, and his condition?

A. Well, that is a question I cannot tell how much a man suffers; I know he was suffering by the way he lay in bed. He had to have assistance to turn over, and I know that he had a nurse there at the time.

Q. Is he at present in condition to do a day's work on a grade wheeling a wheelbarrow full, and shoveling and grubbing?

A. Well, to look at the man sitting down perhaps you could not tell that there was very much the matter with him, but when you come to see the man move you can tell he is disabled.

Q. That he is disabled?
A. Yes, sir.

Q. You saw him frequently, did you, during the month of March, and on the 12th, 13th, 14th, 15th, 16th, 17th, 18th, and 19th of March?

A. Oh, I have seen him along there, I did not take any date, but I know that I saw him.

Q. Do you know whether he was working on the West Seattle street-car grade during that time?

A. He was not able to do that; he could not do that. I saw the man frequently. I was within a few yards of his place.

Q. You were around there?

A. I go in there perhaps twice or three times a week.

A. And you always found him there?

A. I always found him there.

Q. State whether or not he appears to be crippled for life?

Mr. JUREY.—I object as leading.

A. Well, by the way that I seen the man moving, that is, when he tries to get up off a chair I should say—I am not positive, I cannot tell whether he will ever get well or not, but to all appearances to me he is a pretty well disabled man; for the time that he has had this accident he ought to be able to move around pretty lively.

Q. Do you think he will ever be able to follow his business of ship carpenter?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and no foundation laid.

Q. From all the appearances—

Mr. JUREY.—I renew my last objection.

A. Well, I should say it was my opinion that he will not, the way I see him moving.

Q. How does he move?

A. Well, when he sits down he is not sitting very easy, and when he gets up again the man seems to be in great agony and pain, and when he gets up he has got a stick and it takes him some time before he gets straightened up well, and when he moves he has got to have the use of a stick, and that is as far as I could say, and judging the man I saw him to my own satisfaction.

Q. Is he a man that would pretend to be injured worse than he is?

Mr. JUREY.—I object as incompetent, irrelevant, and immaterial, and leading.

A. He is not.

Q. You may explain.

A. I do not believe so. He is one of the liveliest men you ever saw when he is all right; one of the best workers that you ever saw.

Cross-Examination.

Q. (Mr. JUREY.) You say you live at West Seattle, Mr. Jenkins? A. Yes, sir.

Q. How long do you say you have lived there?

A. About nine years, I should say; nine or ten years.

Q. Have you known Newman ever since he has been there?

A. Yes, sir, I have known him ever since he has lived over there, been a close neighbor.

Q. You and Newman are neighbors and are very friendly?

A. Well, neighbors, nothing to any excess.

Q. You testified as to his condition just after he was taken home from the hospital, that he was bedridden and required assistance to turn over in bed, and that such movements inflicted great pain. How long did that last, Mr. Jenkins?

A. Oh, it lasted a long time. Well, I did not keep any record or anything like that, because I thought it was not necessary. I did not keep a diary for that purpose, but to the best of my memory he was months that way.

Q. Months in that condition?

A. Months in that condition.

Q. Well, did he get better?

A. He got better slowly.

A. He got so that he could get up?

A. He got so that he could—the first thing I noticed in the man they kept getting the pillows piled higher in the bed by degrees, and that is the first thing that I noticed that he was getting slightly better.

Q. How often would you call at his house?

A. Well, two or three times a week.

Q. When was the first time that you noticed him out of bed?

A. Well, now, I cannot say as to that, but it must have been about January or February, somewhere along there, I could not tell you.

Q. Could not it have been earlier than that that he got out of bed, that you saw him out of bed?

A. Well, I cannot tell, I do not remember. I did not know that I could be called upon to testify.

Q. Well, lately he has been going out and walking around, considerably?

A. Well, he has been taking walks, I suppose, around the hill once in a while as far as I know. Of course I am not there in the day time, I am there in the evening. My business is over in town here, but I know he cannot be going very far away.

Q. You have seen him down on the wharf, on the Beach, have you not?

A. No, sir; I did not see him on the beach at all. There is only once that I saw him coming I supposed from the ferry there, I assisted him up that time.

Q. He was down on the beach then?

A. I do not know where he had been, I caught him on the hill going up.

Q. When was that?

A. This would be perhaps six or seven weeks ago, somewheres around there.

Q. Now, do you have any recollection of seeing Mr. Newman on the 13th to the 19th of March?

A. Between the 13th and the 19th of March?

Q. Between the 13th and 19th of March last?

A. I cannot positively say as to the date, but I have been close by there and there is scarcely two days passing by but what I see the man.

Q. But there is nothing to impress upon your memory that you saw him between these particular days, or any particular days?

A. Nothing that I know of, no more than the ordinary way that I get in there once in a while, and there are not three or four days pass but what I call there.

Q. What time in the day do you usually call?

A. In the evening generally, after I come from work.

Q. After you come from work? A. Yes, sir.

Q. You have a stone yard over here in Seattle.

A. Yes, sir, I have a stone yard over here in Seattle.

Q. Work over here and go back home at night?

A. Yes, sir.

Q. And it was after the day's work was done that you have always seen Mr. Newman?

A. Yes, unless there was something wrong or something that detained me.

Q. Now, you testified that you believed that he was a permanent cripple?

A. Well, I testified because I think that way from the appearance of the man.

Q. You never examined him, did you?

A. No, sir, I never did. I am not a physician.

Q. You simply made up your mind that he was a permanent cripple from what you have seen and what he has told you?

A. I judge from the way that the man acted.

(Testimony of witness closed.)

Mr. P. C. GOLDIE, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. Are you acquainted with Charles H. Newman?

A. Yes, sir.

Q. Do you live near where he does?

A. Yes, close by him.

Q. What is Newman's standing over there?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial for any purpose whatever, no foundation having been laid for such testimony.

A. Why, he is a good citizen, a good neighbor and honest man, as far as I know, and a good neighbor.

Mr. JUREY.—I move to strike the answer for the reason stated in my objection.

Q. Is he such a man as would be liable to try to put up a job on anybody?

Mr. JUREY.—I object as incompetent irrelevant and immaterial.

A. No, sir.

Mr. JUREY.—I move to strike the answer for the reason stated in my objection.

Q. What do you know about his occupation?

A. I understand he is a man who gets four or five dollars a day easy and in demand for his labor. Always can get work if he wants it.

Q. Ship carpenter? A. Yes, sir.

Q. There has been quite a demand for ship carpenters for the last year, has there not?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial.

Q. State what you know about the kind of work he used to do, and the time employed prior to the accident?

Mr. JUREY.—I object for reasons last stated, and for the further reason that it is not the evidence contemplated by the order of the Circuit Court of Appeals.

A. As far as I can understand he was constantly employed and got good wages.

Q. He was an industrious man, was he not?

A. Yes, a very industrious man.

Q. State, if you know, what his present condition is?

Mr. JUREY.—I object for the reason that no foundation has been laid for testimony of this kind.

A. Why, he appears like an invalid, like a man incapable of work, as far as I can make out.

Q. In what way does he indicate that?

A. By his walk and his speech and his appearance, he don't look to me at all like the man I used to know. Walks with an effort, and so forth.

Q. Does he seem to require quite an effort to walk?

A. I should say he did the way he would lean on his cane and make use of it, that he did.

Q. And does he walk off smoothly and even or slow, or how?

Mr. JUREY.—I object as leading.

A. No, he does not; he walks like an invalid.

Q. Have you seen him sitting down or raising up at any time?

A. No, I cannot say that I have seen him rising up, I cannot say that I have.

Q. Do you know whether he can stoop over any or not?

A. No I cannot say about that. I do not recollect seeing him in that particular attitude. My wife has told me of course she has seen him.

Q. To all appearance do you think he will ever be able to follow the occupation of ship carpenter?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial and no foundation laid for such testimony.

A. As far as I can say I do not think that he can.

Q. Does he appear to be in a condition to be able to work on a street grade, wheeling a wheel barrow?

Mr. JUREY.—I object as leading.

A. No, sir, not at all.

Q. Mr. Murphy testified here that he worked on a street grade over there on the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th of March shoveling and grubbing and wheeling. Do you know whether he worked there or not at that time?

A. I do not know that he did work there any but I think it would be impossible for the man to do it, that is, I feel that way.

Mr. JUREY.—I move to strike the answer for the reason that no foundation has been laid for this class of testimony and the witness has not been shown to be competent.

Q. It is an utter impossibility, is it not, that he could do that?

Mr. JUREY.—I renew my last objection.

A. I should say it was impossible for that man to work as they say.

Q. Has he been to your house frequently Mr. Goldie?

A. No, sir, he has not. He was there once to my knowledge.

Q. Recently? A. Yes, sir.

Q. When was that?

A. That was the first day of this month, June, at my daughter's funeral.

Q. Did he seem to have any difficulty in getting around?

A. He did. I answered him at the door, and as he came to the door he did walk, as I tell you like an invalid.

Q. State whether or not he has any use of his back, to all appearances?

A. Why it looked to me as though he depended on that cane to support himself, and his back, I suppose that is why he had a cane in walking, leaning on the cane.

Q. Was it a heavy cane?

A. I should call it a medium weight cane, it was not a light cane, it is a cane that he would need for strength—I should say it was a heavy cane.

Cross-Examination.

Q. (Mr. JUREY.) You say you reside at West Seattle?
A. Yes, sir.

Q. How long have you known Mr. Newman?

A. I have known him—let me see, I should say about a year and a half.

Q. How long has he lived over there.

A. I do not know how long he has lived over there.

Q. You are very friendly with Newman, and your neighbors?

A. No, sir, not to a great extent, because I am kind of a reserved man, and do not make very many friends.

Q. You have testified as to Mr. Newman's condition physically. You made no examination of him?

A. No, I never testified to that.

Q. You are not a physician or surgeon?

A. No, sir.

Q. Now, your idea or opinion of his physical condition is simply derived from the appearances and what he has told you and his expression and appearance?

A. He never told me anything himself, but from his appearance and what my wife has told me.

Q. He never told you himself?

A. No, sir, he never spoke but a very few words—never spoke but once to me.

Q. Now, how often did you call at his house?

A. I never called at his house.

Q. You never saw him, then, during the time that he was confined to his bed, if he was confined to his bed?

A. No, I only saw him passing by the house.

Q. When did you first see him out after he was hurt?

A. I could not tell you that, but it must have been some time in the month of April, I should say.

Q. In April? A. I think so, I don't know.

Q. You are not sure. It might have been earlier?

A. It may have been earlier, but I do not think it was any earlier.

Q. He goes out now, don't he?

A. Not to my knowledge.

Q. Have you ever seen him down on the beach?

A. No, sir.

Q. Going to or from the city on the ferry?

A. No, sir.

Q. Was there anything that impressed on your memory that you saw Mr. Newman between the 13th and the 19th of March or any of these dates?

A. No, sir, there is not.

Q. And you made an affidavit for Newman, did you not, to be used in the Circuit Court of Appeals.

A. Yes, sir.

Q. The people over there are generally very friendly to Mr. Newman?

A. They all seem to speak well of him, they seem to like him as a neighbor.

Q. What is your business? A. I am a tailor.

Q. Where is your shop?

A. I have no shop at present. I am working for a party in town and I take work over with me over to West Seattle.

Q. Well, do you spend much of your time over here?

A. In Seattle?

Q. Yes.

A. No, I probably come over once a week, perhaps twice or perhaps three times; sometimes not at all.

(Testimony of witness closed.)

Mr. W. J. THOMAS, a witness called on behalf of the appellee being first duly sworn testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. How long have you lived there?

A. Two or three years.

Q. Are you acquainted with Charles H. Newman?

A. I live in the next house to him.

Q. How far do you live from where he lives?

A. Well, it is about thirty feet, I guess, from house to house.

Q. Thirty feet?

A. Thirty or forty feet, not over that. I do not think it is over thirty feet.

Q. Did you know Newman before he got hurt?

A. Well, yes, I knew him ever since he came down from Alaska.

Q. Have you seen him frequently since he got hurt?

A. Yes, sir.

Q. Do you see him frequently now?

A. Well, yes, I do, I call in there quite often.

Q. About how often do you call in there, Mr. Thomas?

A. Well, two or three times a week anyway, may be more than that. I drop in sometimes to take his papers, you know, in.

Q. Did you see him at his house on the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th of March last, or any one of these dates?

A. Undoubtedly I must have seen him because I was at home mostly myself at that time.

Q. Could you state whether you saw him at that time or not?

A. Undoubtedly, because as I said before, I go in once in a while, whether I have anything to do or not, to see how he is, as a neighbor.

Q. Would a period of six days pass at any time without your seeing Newman?

Mr. JUREY.—I object as leading.

A. I do not think so, it could not have been. My house is right against the alley and we can see from the door one another in the house there.

Q. Mr. Murphy has testified that Mr. Newman was working on a grade over there, wheeling wheelbarrows full of sand and shoveling and grubbing on the 13th, 14th, 15th, 16th, 17th, 18th and 19th of March. Do you know whether that is so or not?

A. I hardly think that is, because I am positive that he has not; as I stated before I was in Seattle most of the time in March, and I was working there.

Q. He also testified that he was working on the grade on April 4th, 5th, 6th, 7th 8th, and 9th wheeling wheelbarrows and grubbing?

A. The man is not able to do that.

Q. What does his appearance at the present time indicate, Mr. Thomas, how does he appear?

A. Well, he does not seem to be very much better than he was three or four months ago, or five. He looks to me quite as stiff when I go and rap upon the door. Often Mrs. Newman will be at home and come in, and I take the paper up there and I see him coming following her with a stick. I think the weather affects him a good deal.

Q. In nice weather you think that he will be better.

A. Yes, I think he will be better.

Q. Do you know whether or not he suffers any pain now?

A. Well, I think he does. I often see him walking in there about the yard, and he is stiff in his movements, especially such weather as this, it seems to be worse, in fact he say so.

Q. Does he have the appearance of being crippled for life?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial and no foundation laid for such testimony, this witness not being an expert.

A. Well, that is my impression; and I have been around a good deal, and all of us cannot help but notice him when I see him in his movements.

Mr. JUREY.—I move to strike the answer for the reason stated in my objection.

Q. You have seen people that were crippled in the back frequently, have you not?

A. Well, I have during my life undoubtedly seen a good many but I cannot recall anyone particularly at the present time; I have seen them, old men like myself, but I have seen a good many men hurt like Newman, and so forth, and put out of form, their natural form.

Q. Does Newman appear to be put out of his natural form?

A. I tell you, since this accident his movements have not been free, is tight and stiff.

Q. Can he bend his back? A. Well—

Q. Or does he have to hold his back stiff?

Mr. JUREY.—I object as leading.

A. Well, that is the position he has, and he seems to be out of his natural position entirely, I cannot help but notice him when I see him, I don't care where he is.

Q. Do you know whether he has to wear a steel jacket or corset?

A. Well, yes, he has; I know that he has, and does too.

Q. Do you know whether he bears heavy on his cane when he walks? A. Well, he has a cane?

Q. Does he lean on his cane?

A. Yes, he seems to.

Q. You used to take his paper up for him in March and April, did you not?

A. I am taking it—well, on an average of perhaps three or four times.

Q. Did you do so in March, between the 13th and 19th?

A. Well, yes, undoubtedly I must have done it then too, because I was going backwards and forwards.

Q. About what time would you take his paper in to him?

A. Well, about half-past five as a general thing, between half-past five and six.

Q. Did you do so in April, from the 4th to the 9th?

A. Well, I done it all around there, consequently I must have done it then.

Q. Would you find him at home generally when you would take the paper there?

A. Sometimes I would find him, but Mrs. Newman, as I stated.

Q. Would come to the door? A. Yes.

Q. And you would just hand the paper?

A. I would just hand the paper. I would be going from the city here on the half-past five boat, and I would get in the house before six o'clock.

Cross-Examination.

Q. (Mr. JUREY.) You live at West Seattle?

A. Yes, sir.

Q. How long have you known Mr. Newman?

A. Ever since he came down from Alaska.

Q. You are very good friends, are you?

A. Well, I cannot say that we are any more than neighbors should be.

Q. You testified in this case once before, did you not?

A. Yes, sir.

Q. You testified that you nursed him after he was taken home from the hospital? A. Yes, sir.

Q. You say you are in partnership with Jenkins?

A. No, sir, I work for Jenkins once in a while. I do not work for him now.

Q. When did you quit working for him?

A. Oh, I don't work regular. I work when I can get it. I am not so that I can do constant work.

Q. Did you work for Jenkins during the months of March and April? A. Yes, sir.

Q. You worked over here in Seattle? A. No.

Q. At West Seattle?

A. Jenkins was putting a wall on a lot there and I was gathering the stone off the blocks in the vicinity.

Q. You worked all the time there during March and April? A. Well, not all the whole time.

Q. Did you work any of the time over here in the city?

A. No, sir. As I stated before I was not thoroughly well, perhaps the first part of March I was not working any where only around the house.

Q. What part of March was that?

A. The first part.

Q. Well, from the 12th on you were working, were you?

A. Well, yes, I must have, because it took me to do that job perhaps three or four weeks, but there was occasionally a day I would not be at it.

Q. What time did you commence work in the morning?

A. I would commence about eight o'clock.

Q. What time did you quit?

A. Well, we would quit about five, that is, unless the daylight would be short. When I was hauling then I would work overtime. My day's work I considered eight hours.

Q. At the time you saw Newman here, you would work until five o'clock and you would see him after that time.

A. Well, it was in March, you see, and I could see him most any time; I was going backwards and forwards, gathering stone off the blocks above there and I could have seen him, and when I would come back to dinner at dinner time, you see.

Q. Any time that you saw him at his house or around about his house would be after five o'clock while you were working in March?

A. Sundays was generally the days that I would go over, in the evening, as you say it would be after five o'clock.

Q. On the week days?

A. Yes, provided I am not working.

Q. During the time that you were working?

A. When I ain't working, of course, I am liable to drop in any day.

Q. Now, was there anything that particularly impressed on your memory that you saw Newman between the 13th and the 19th of March, on any of these days?

A. Well, I cannot bring anything that happened to mind, but as I say, I saw him all the time, being close together.

Q. Is there anything especially that impresses on your memory that you saw him on the 5th or the 6th, or the 9th or 10th of April last, or any of these dates?

A. No, I seen him, as I say, mostly when I was going backwards and forwards around the house.

Q. You cannot state positively that you saw him on any of these days except from the usual course of going to his house? There is nothing special to impress it on your memory?

A. Well, at present I cannot bring anything special to mind that occurred to make a distinction between it and other times.

Q. Or any other day? A. Yes, sir.

Q. You testified to his physical condition, Mr. Thomas. Did you ever examine him, did you make a personal examination of him? A. No, sir.

Q. You are not a physician or surgeon and do not make a pretense to be? A. No, sir.

Q. And what you know of his condition is simply your idea or your judgment from what you have seen, and what he and others have said, is that it?

A. Yes; well, I am competent, because when I was dressing him I could tell positively then, I could tell by the man's countenance and expression when he was in pain and when he was not as well as if he was telling me, and a good deal better, you know.

Q. When did you quit nursing him?

A. I think that was about the 19th of August.

Q. Of August last? A. Yes, sir.

Q. Now, what was his condition up to that time, Mr. Thomas?

A. Well, he was not able to do anything, in one sense of the word.

Q. He was flat on his back?

A. Yes, he was lying in bed and I was nursing him for three months, turning him during the day, I was not there nights.

Q. Could he turn without assistance?

A. No, sir. Nor even when I allowed him to make the attempt to do it himself.

Q. How long did that last, that condition?

A. I was there three months, over three months, myself. He was for a good many months, I used to drop in and see him maybe two or three times a week, I am positive that he was there for many months after I left.

Q. When was the first time that you saw him sitting up after you quit nursing him, when was it you saw him sitting up first?

A. That is a question I cannot answer. But as I say it must be nine months.

Q. Did you see him sitting up before Thanksgiving?

A. I don't think I did, as I say, before this.

Q. You would not pretend to say that he did not sit up before Thanksgiving, would you?

A. No, sir, I do not know.

Q. Now, when do you think, what is your best recollection as to the time when he sat up?

A. I cannot remember the time. One of my little girls said that Mr. Newman was up and, I know it was many months, undoubtedly, after I quit nursing him. I remember that distinctly, that my little girl came in and said that Mr. Newman got up; but I haven't anything, of course, to remember it by, I did not make any note of it. Consequently I cannot say when it was.

Q. Could you locate the time with reference to Christmas, was it before Christmas?

A. Well, no, I do not think that I could, but it was a good many months ago, because I know that well. I am trying to get it in my mind, but I cannot at the present time.

Q. Now, was it three months or six months. He was hurt in April and it would be six months in October, do you think that he was sitting up then?

A. No, certainly I do not think he was.

Q. Do you think that he was able to sit up in seven months after he was hurt?

A. I doubt that too.

Q. Do you think it would be eight?

A. I doubt it. Well, as I say, I could not bring the date but I know it was a long while after I stopped nursing before he was able to sit up.

Q. He is able to sit up now, Mr. Thomas?

A. I guess he is now.

Q. You have seen him sitting up?

A. I have seen him sitting up but he did not seem to be—

Q. You have seen him out doors walking around?

A. I saw him going backwards and forwards outside, and I have seen him coming out of the house and looking around.

Q. Have you ever seen him down on the beach since he was hurt? A. I do not hardly think that I have.

Q. Have you seen him on the hill, going up and down the hill?

A. I do not know, the way that you put the question, but I have seen him going towards Jenkins lives, I can remember that distinctly.

Q. He has greatly improved now over the condition in which he was when you were nursing him?

A. Well, he must be better because he was helpless then.

Q. Now, you spoke of his wearing a steel jacket. Did you ever examine the jacket?

A. I did not examine it, but I have seen it, it was shown to me, that is, when I would be seeing him I would ask how he was.

Q. What kind of a looking thing is it?

A. Well, he did not open his clothes to show it, but he said that he had it.

Q. You testified that he did not work on Murphy's grade, did you not?

A. Well, it is laughable to me to think that anybody would think that he was doing that.

Q. Then, you think that he was not working there because you think he could not? A. Yes, sir.

Q. Were you ever down on Murphy's grade?

A. I was.

Q. Where the men were at work?

A. Yes, sir.

Q. How often, Mr. Thomas?

A. I was down there maybe two or three times. I am not sure; not over three times.

Q. Do you know what times they were?

A. Well, I should not wonder but what they might have been in the month of March when I was on that job.

Q. Might have been? A. Yes.

Q. You do not know?

A. Well, I am pretty sure that they were because I will tell you the reason why, I bring it to memory now; I went around and I was thinking about getting a job myself, I was not working; and I went to the elevator afterwards for a while, for a week.

Redirect Examination.

Q. (Mr. MARTIN) When was that?

A. That was in April. I am pretty sure it was in April, either April or March.

Q. Do you know what time Murphy's men went to work in the morning?

A. Seven o'clock; when they started I am pretty sure they worked ten hours, and quit at six.

Q. (Mr. JUREY.) You do not mean to say that Mr. Newman could not have gotten to Murphy's work without your seeing him if he had been able to do it?

A. Well, I was around there all the time, consequently anybody could have gone from one place to the other.

Q. West Seattle there has all been cleared way, and a man could go around anywhere, although some ways might be more convenient than others?

A. Oh, I hardly think that Newman could have gone down the grade there in his condition.

Q. A reasonably strong man could have gone down?

A. Oh, of course a strong man could have done so.

Q. A man who was able to work on the grade could have gone around that way? A. Of course.

Q. (Mr. MARTIN.) Could Mr. Newman have, from the 13th to the 19th of March, worked on that grade, and from the 4th to the 9th of April worked on that grade without your knowing it?

A. I doubt it very much because Mrs. Thomas is over at that place every day and I am positive Mrs. Thomas would have told me if there was anything that way.

Q. Is Mr. Newman such a man as would try to put up a job on anybody for the purpose of bleeding him?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial and no foundation laid for such testimony.

Q. Is Mr. Newman a man that would be likely to put up a job on a company by pretending that he is hurt worse than he is to get a judgment?

Mr. JUREY.—I renew my last objection.

A. From what I know about him he would be about the last man that I would think of, from what transactions I have had between him and I.

Mr. JUREY.—I move to strike the answer for the reasons stated in my objection.

Q. He earned \$5 a day before he got hurt?

A. At the present time he could get \$5 a day easy enough. He was getting \$4 before he was hurt and \$4.50.

(Testimony of witness closed.)

Mr. S. H. STEVENSON, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. How long have you lived there?

A. Since 1889.

Q. Do you know Charles H. Newman, the appellee in this case? A. Yes, sir.

Q. How long have you known him?

A. Five years.

Q. Have you ever called on him or seen him frequently of late? A. Yes, sir.

Q. Tell the commissioner what his condition is, as it appears to you from what you have seen?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial and no foundation laid for such testimony, the witness not being shown to be competent.

A. Well, the condition what it was prior to his getting hurt on the "Blakeley" is very poor, he is not a man and never will be. He never will be himself again. I saw him once trying to get up the hill but I had to help him up, one Sunday afternoon in particular he came around to my house to see me and sat down in a chair and I had to help him up out of the chair and help him home.

Q. How long ago was that?

A. That was some time in May, I forget the exact time, but it was in May.

Q. Was he able to rise up from the chair?

A. He could not get up at all.

Q. After he got up about what position would he be in, Mr. Stevenson?

A. Well, a man with his back broke almost, just stands on his cane this way (showing).

Q. Do you know whether he can bend his back or not?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and no foundation laid for any such testimony.

A. I am satisfied he cannot. The man cannot pick anything off the floor.

Q. Can he turn his back or his shoulders around in a certain position on his hips?

A. Not unless he uses his hands and helps himself, something like that (showing.)

Q. Has he any other motion, or can he make any other motion with his body than the hinge motion at his hips with his legs?

Mr. JUREY.—I object as leading.

A. None that I could see; the man was apparently, and from everything I know about the man he is almost useless.

Q. Mr. Murphy testified that Mr. Newman worked on the grade wheeling and grubing and shoveling from the 12th to the 19th of March, 1900, and from the 4th to the 9th of April, 1900?

A. He never worked on the grade.

Q. Does his condition and appearance indicate that he could perform any manual labor at all?

A. The man certainly cannot. In the first place, if he could work he would not work on the grade, he is a ship carpenter, and he is a man that would not work on the grade anyway. He never was known to do any digging or shoveling.

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and move to strike the answer for that reason.

Q. What wages, if you know, could he have got as a ship carpenter?

A. Well, he has always demanded, as far as I have known, from \$3.50 to \$4 and \$5 a day when he was himself, because he is a first-class man.

Q. Could he have got work of that kind during the last year?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. There is quite a demand for ship carpenters?

Mr. JUREY.—I renew my last objection.

A. Yes, sir.

Q. From what indication you have seen of his condition do you think that he will ever be able to follow his avocation of ship carpenter?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and no foundation laid for such testimony.

A. No, I do not.

Cross-Examination.

Q. (Mr. JUREY.) Mr. Stevenson, you testified as to Mr. Newman's physical condition?

A. Yes, sir.

Q. You are not a physician or surgeon and do not make any pretense to be?

A. No, sir, I am not an expert on that.

Q. Did you ever make a personal examination of him?

A. No, sir, I did not, but I am satisfied from the character of the man and his disposition, and everything of that kind, that the man would not feign anything of that kind.

Q. You do not believe that he would pretend to be what he is not?

A. No, sir, he would not feign anything that way.

Q. That is your opinion?

A. That is my opinion. And I am willing to swear to it.

Q. Then, your opinion is formed from what you have seen of him and acts and appearance, and what he and others have told you, and not from any personal examination? A. Not from any personal examination.

Q. Prior to this and at the present time, your opinion is based upon what you have seen and heard?

A. I have heard nothing, only what I know of my own personal knowledge, not what I have seen.

Q. What you have observed as to his acts and condition? A. Yes, sir.

Q. Now, you say he did not work on Murphy's grade?

A. Never in the world.

Q. How do you know that he did not?

A. I am satisfied, perfectly satisfied, and am willing to swear to it.

Q. How do you know?

A. I am satisfied he did not; he would not work during that time.

Q. How do you know it?

A. I know that he would not.

Q. How do you know that?

A. I know this, that he would not work there.

Q. How do you know that he would not work?

A. I know that he would have to be terribly hard up, and so would you.

Q. Then, you cannot give any reason why, more than that, why he did not work there?

A. Well, I am satisfied because he never was on that work there. I was working there on that road every morning before they went to work, and when they passed me I was working on the road there in the morning, from the 14th of the month until Murphy got through, every day almost, with the exception of Sunday.

Q. Now, are there not other ways that he could have gone besides that one?

A. There was not, for I was up and down every time, they were coming to dinner at the hotel and they left there in the morning, and I was there before 7 o'clock in the morning, before they left, and I was generally there at six.

Q. You do not mean to say that he could not have gone around in some other way if he had felt disposed to?

A. I am satisfied the man did not work there.

Q. It is possible that he might?

A. Well, he could have done so—no, I do not believe he ever did, I am satisfied he never did; he would not do it no way.

Q. You do not believe that he would do anything wrong? A. No, I do not, no, sir.

Q. That is what you base your opinion on largely that he did not work there and that he is not feigning—you do not believe that he would do it?

A. He could not have worked there even if he had wanted to. It was impossible, the man was not able to work.

Q. That is your opinion, that he was not able to work? A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) What time did Murphy's men go to work in the morning?

A. About a quarter before seven they left the hotel.

Q. About what time would they quit at night?

A. Six.

Q. You were back and forth there most every day from the 12th to the 19th, were you not, Mr. Stevenson,

A. Yes, from the 1st of February until the last of April.

Q. And if Newman had been working there you would have seen him, would you not, between the 12th and the 19th of March, and the 4th and the 9th of April—you would have seen him?

A. Sure I would. I would have seen him and known that he was at work there.

Q. The fact is, it is ridiculous to think of his working there?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial.

A. He never did, the man could not have worked there.

Q. What do you know about this man, Neil Murphy?

A. Nothing only what I have seen of him since he has been over there.

Q. Have you ever heard of him belonging to the Soapy Smith gang up at Skagway?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and hearsay.

A. Yes, I am sure. I can not swear that he did, but I have heard that.

Mr. JUREY.—I move to strike the answer for the reasons stated in my objection.

A. (Continuing.) I heard Mr. Roberts from the Mill—

Mr. JUREY.—I move to strike the answer as hearsay, and incompetent, irrelevant and immaterial.

Q. That Soapy Smith gang had quite a reputation for being criminals, did they not?

Mr. JUREY.—I renew my last objection.

A. I heard so, yes.

Mr. JUREY.—I move to strike the answer for reasons last stated.

Q. (Mr. JUREY.) You had no interest in Mr. Murphy's contract, had you? A. Not a particle.

Q. And no interest in the men that were working for him? A. Not a particle.

Q. And any notice you took of his men was simply through curiosity?

A. That is all. Well, I would notice them the same as if they were working on the elevator; I would notice men go up there and some of them I would get acquainted with in one way or another, being around and at the hotel, I would be down at the hotel in the evening, and see them in the bar-room, and I would know every man and I could place him and could pick him out on the street.

Q. Who worked for Murphy?

A. The names I could not tell you.

Q. Between the 13th and the 19th of March?

A. Oh, I could not tell you the names.

Q. Can you name any one single man who worked for him?

A. There was a fellow called Nicholas Frankie that is fishing somewheres; there is another fellow over here by the name of Hogan, who is at West Seattle now, who worked for him.

Q. Can you name any more?

A. I cannot name any more. I could tell you if I could see them. These fellows before they were working for him worked in the elevator also, and in the mill, and boarded there with Murphy.

Q. A time about the 13th to the 19th of March for three or four days there you were not working on the road there, you had no lumber or something of that kind?

A. There was no time during that month but what I was working somewhere upon the road. Either upon the

road along there or up on the hill. There was no day during that time when I was not along there, and I do not presume that there are twenty days in the last year that I have not been in that saloon.

Q. But there were several days that you were not on the plank road?

A. Yes, but not right at that time, because this man Cox that was foreman there had been away, he left about the middle of the week, sometime along about that, the 14th or 15th, sometime between the 1st and the 15th, and Murphy came and spoke to Cooper and wanted me to act as foreman. He told Cooper—I did not want none of it. And he took Cox, that was these seven, eight or nine men. I do not know the man, I would know their countenances, but I never knew their names.

Q. You cannot name them?

A. No, sir, I am satisfied that Newman was not among them.

Q. But you could not name any other men that would know him?

A. Not at that time outside of Cox himself, because I was not personally acquainted with them. I could tell you if I should see them. I could tell you the men if I should see them. Murphy came to me before he hired Cox and wanted me to go and take a contract for digging out some trees and I would not do it, because Cooper did not want me to go away from his work.

Q. How many days between the 13th and the 19th of March were you working up on the hill there and not down on the plank road?

A. Well, there was no time that I was not down

there during that time. I would generally go down from the house and see Tommy Murphy. He was then running the place before Wells bought it out. When Murphy first came there Tommy Murphy had charge. That was, I think, along about the first of March, some time about that time we started in there, and I used to go down there every morning to get my cocktail and go back up the hill and get breakfast and then go to work, and then come down there in the evening; when I was not working down below, I would go down there sometimes during the day and I saw all the men working there. I was at the fish-house at the time they were putting the bunks in that house, and I helped move the house over back of the fish-house, and Jack Kelly and I moved the house over there, and I saw the fellows had put the bunks in.

Q. (Mr. MARTIN.) Was Newman putting these bunks up?

A. He was not there at all, was not down there while they did it, I do not think. I was there a couple of days.

Q. You are positive that he did not assist in putting the bunks in?

A. Not at all, he had nothing to do with it. I do not think the man knew they were in until they were in.

(Testimony of witness closed.)

At this time further proceedings were adjourned until June 23, 1900, at 2 o'clock P. M.

Seattle, Wash., 10 A. M.,
Saturday, June 23, 1900.

Continuation of proceedings pursuant to adjournment as follows:

MARTIN KILE, a witness for and on behalf of appellee, called and duly sworn, testified:

Q. (Mr. MARTIN.) Where do you live, Mr. Kile?

A. I live in West Seattle.

Q. How long have you lived at West Seattle?

A. I moved over there the fall before the big fire here, between Christmas and New Years.

Q. Lived there ever since? A. Yes, sir.

Q. Are you acquainted with Charles H. Newman?

A. I am.

Q. What is Mr. Newman's standing there in the community, Mr. Kile?

Mr. JUREY.—Objected to, as incompetent, irrelevant and immaterial, and because no foundation has been laid for such testimony.

A. Why, as far as I know, he is all right as a neighbor. I never heard a man complain against him.

Mr. JUREY.—I move to strike out the answer on the same grounds.

Q. Is he a man that would be likely to try to put up any job on anybody to mulct them in damages?

Mr. JUREY.—Objected to as incompetent, irrelevant and immaterial, because no foundation has been laid for such testimony.

A. I should not take him to be that kind of a man, what little acquaintance I have had with him.

Mr. JUREY.—I move to strike out the answer on the same grounds.

Q. So he stands pretty well, with his neighbors there, people who know him?

Mr. JUREY.—Objected to as incompetent, irrelevant and immaterial, because no foundation has been laid for the testimony, and as leading.

A. Yes, sir.

Q. Have you seen Newman lately, Mr. Kile?

A. I ain't seen him for three or four weeks.

Q. What were you doing, Mr. Kile, along from, say, the 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th of last March?

A. I was working on the road, on that bridge, as we call it, the plank road from the coal bunkers.

Q. Where is that with reference to the place where they were putting in the grade for the street-car line over there?

A. Well, the street-car crosses just this side, north of the elevator, crosses this road that we have been building, and that we was working at this year.

Q. Do you know a man by the name of Murphy?

A. I do.

Q. He had men working over there on the grade, did he not? A. He, did.

Q. Now, did you see those men in the month of March, from the 12th to the 19th, there working on the grade?

A. I seen them every day at noon, both ways.

Q. Both going and coming? A. Yes.

Q. Did you see Mr. Newman with any of those men?

A. He was not.

Q. That is, Charles H. Newman, the man that was injured? A. No, sir.

Q. The appellee in this case? A. He was not.

Q. What is Mr. Newman's condition to all appearances, Mr. Kile?

Mr. JUREY.—Objected to as incompetent, irrelevant and immaterial, because no foundation has been laid for such testimony and because the witness has not been shown competent to give such testimony.

A. Well, my judgment is that he is crippled for life.

Mr. JUREY.—I move to strike out the answer for the same reasons.

Q. He has every indication of that, has he?

Mr. JUREY.—Same objection.

A. Yes, sir.

Mr. JUREY.—I move to strike out the answer.

Q. Has he any difficulty in getting around, and if so, in what way, have you observed?

A. Well, what time I have seen him out, he is very careful, very slow in walking, goes with a cane every time that I have seen him.

Q. Does he carry his back in one position?

Mr. JUREY.—Objected to as leading.

A. Well, he walks slow, like a man that had his back hurt; that is the nearest I can explain that to you.

Q. You have seen men who have had their backs hurt? A. Yes.

Q. And he is required, is he not, to hold his back almost constantly in the same position?

Mr. JUREY.—Objected to as leading.

A. Yes, sir.

Q. He has no circular movement of the shoulders on the hips, has he?

Mr. JUREY.—Objected to as grossly leading.

A. He walks very carefully and he don't stir himself but a very little, just merely to take his steps and use his cane.

Q. Has he the appearance of a man that would be able to push a wheelbarrow, shovel and grub on a grade?

Mr. JUREY.—Objected to as grossly leading.

A. Never.

Q. A man by the name of Murphy testified that Mr. Newman worked on the street-car grade over there from the 12th to the 19th of March, and from the 4th to the 9th of April, 1900, shoveling and grubbing and grading, and that it was this same Charles H. Newman that was injured. Now, what would you say to that testimony with the knowledge you have of Mr. Newman and his condition?

Mr. JUREY.—Objected to as incompetent, irrelevant and immaterial, because no foundation has been laid for such testimony and because the witness has not shown himself competent to testify in such a matter.

A. That Newman did not work on the grade at that time.

Mr. JUREY.—I move to strike out the answer on the same ground.

Q. Was he, in your opinion, able to work on the grade at any time since he was injured?

A. No, sir.

Q. About how tall a man is Mr. Charles H. Newman, Mr. Kile?

A. I should take him to be very nearly as tall as you are, only not so heavy.

Q. Would you judge about five feet eight?

A. Somewheres in that neighborhood.

Cross-Examination.

Q. (Mr. JUREY.) How long have you lived in West Seattle, Mr. Kile?

A. I moved there between Christmas and New Years before the big fire here.

Q. How long have you known Mr. Newman?

A. Ever since he has lived there, now, I can't tell you how long—I have forgotten the date when he did move there.

Q. You and Mr. Newman are very friendly?

A. No, not more than anybody else; I never had any deal with him.

Q. You say you were working on the plank road under the bluff at West Seattle?

A. Yes, sir.

Q. As I understood you to say, you were working there between the 12th and 19th of March?

A. Yes, sir.

Q. Do you know when you finished that road, Mr. Kile?

A. No, I have forgot the date. I know I helped until it was finished, but I can't tell you the date now here.

Q. They finished it in March, didn't they?

A. I don't think we did.

Q. You don't think you did? A. No, sir.

Q. Is it not a fact they finished that road about the 16th of March? A. No, sir.

Q. They did not?

A. No, sir, I don't think so.

Q. Well, if they did, your opportunity of seeing Mur-

phy's men passing along twice a day each day was while you were working on that road?

A. Yes, sir.

Q. And if they had finished the road the 16th of March, then you are mistaken about having seen them pass along after that, are you not?

A. Well, I don't think we finished the road at that time.

Q. I say, if they had finished it at that time?

Mr. MARTIN.—We object to such a form of question, if such an impossibility was so and so then would another impossibility be so and so; that is not proper form of question and is simply encumbering the record.

Q. And if they had finished the road the 16th of March, then you are mistaken about having seen them passing along, are you not?

A. Well, if we had finished it, we would not have worked there, and of course I could not have seen him, but I know we did not finish it at that time.

Q. You had no interest in Mr. Murphy's contract, had you? A. Not at all.

Q. Nor in his men? A. No, sir.

Q. You had no interest or reason in keeping watch on them or noticing them other than that of curiosity?

A. That is all, only we would see them go back and forward.

Q. Now, is there anything that impresses it upon your memory that you saw those men or noticed those men particularly on the 12th, 13th, 14th, 15th, 16th, 17th; 18th, or 19th days of March last—on any of those days?

A. Now, as far as dates, I can't give you the dates,

but I know we saw them the first day they came over there; they was all strangers to us, this Mr. Murphy I never had seen the man and I did not know who Mr. Murphy was, whether he was boss or not, only he was dressed in a different style and in a short time we found out he was the boss.

Q. What time did Murphy commence working?

A. That I can't tell you now, I can't give you the dates.

Q. Then there is nothing that impresses it upon your recollection that you saw these men the particular days or any of the particular days that I have mentioned?

A. No, any more than I saw them the first day they came over there and we were talking who they was amongst ourselves; there was five or six working on the road there and we found out they was the street graders that was going to grade our street and we had an interest in the road, because we was anxious to have the road, that is why we talked about it.

Q. How many of them were there, Mr. Kile?

A. There was eight to ten, sometimes more.

Q. You testified that Mr. Newman did not work on Murphy's grade. How do you know he did not work?

A. Well, he did not work with that gang that passed us, and I know, I am satisfied the man was never able to work on that kind of work.

Q. Couldn't he have gotten to Murphy's work, by going in some other direction?

A. Not if he boarded where he claimed he boarded his men and where I knew the rest of the men boarded.

Q. You saw them going back and forth as they went

the usual way, but might they not have gone some other way—there were other ways to go, were there not?

A. Yes.

Q. But which might have been more inconvenient, but a man could go up over the hill the other way?

A. It would have been a good deal more inconvenient.

Q. Still he could have done it?

A. He could have done it by going through the woods and up hill and down; the other way was good walking.

Q. Then you say that he did not work on the grade?

A. I do.

Q. Simply because you did not see him pass along with Murphy's men and you did not believe he could work?

A. Satisfied he couldn't work.

Q. That is the only reason you have for stating he did not work?

A. Yes, sir.

Q. Now, why do you believe he could not work?

A. Well, for two reasons; one is, I don't believe the man is able to do it, to do anything—I know he aint, and the further reason if he had been able he would not have worked for Murphy on the grade.

Q. Why wouldn't he?

A. Because he can command bigger pay than Murphy can pay him; Murphy can't pay him enough as a common grader for what Mr. Newman is worth at his trade.

Q. And that is the reason you think he did not work?

A. Yes, sir.

Q. Did you ever examine him?

A. No, sir. I was there though and helped to turn him over.

Q. You are not a physician or surgeon?

A. No, sir.

Q. Then all you know about his condition is your opinion, from what you have seen of his movements and what he and others have said about it?

A. And the day that I was there and took care of him, one day, I know that he couldn't help himself at all.

Q. What day was that, Mr. Kile?

A. I can't tell you the date; that was in May, I think, that I was called down there.

Q. May of this year?

A. Yes. I know that the way we turned him over, he could not help himself in any way, shape or manner.

Q. In May of this year? A. I think so.

Q. Last month?

Mr. MARTIN.—He means 1899.

A. Yes, May 1899.

Q. May of 1899? A. Yes, sir.

Q. You have not helped to turn him over or helped to care for him since that time?

A. No. Of course I live a little further away, and he has nearer neighbors, and they of course go in.

Q. Did you see him out at all, lately?

A. Not lately, I did not.

Q. When did you say you saw him last?

A. Well, now, I can't tell you that; I have seen him three times since he has been able to be out, since I have heard of his being out.

Q. When was the first time you saw him?

A. Now, I can't give you the date of that. I know I was coming down from my house to the ferry boat and

I saw him on the street and I stopped and talked with him.

Q. Whereabouts on the hill coming down?

A. Just coming down part way, it was just about where the plank road and the street-car going up on the north side, where they come together, if you have been there.

Q. About how far down the hill, half way?

A. No, I don't think it is quite half way.

Q. Now can't you locate the time that you saw him there?

A. No, because I paid no attention to it.

Q. Before Christmas?

A. It was the first time he was out, now, I won't tell you because I can't give you the date.

Q. Could you locate the date with reference to Christmas, was it before Christmas?

A. No, I can't tell you that; all I know now is that is the first time I saw him out.

Q. Now, when was the next time that you saw him?

A. Oh, I don't know, two or three weeks after that, I think was the next time I saw him coming down. Now, the first time I don't think he came clear down the hill. The next time I saw him he came clear down.

Q. Came clear down the hill?

A. When I passed him he was pretty near down the hill.

Q. Now, can't you locate that time?

A. No, sir, I cannot.

Q. Now, with reference to Christmas, was it before Christmas or after?

A. I can't tell you that at all.

Q. When was the next time that you saw him?

A. It was some time after that, I can't tell you just when.

Q. Where did you see him then, Mr. Kile?

A. I saw him coming down the hill.

Q. He came clear down the hill that time?

A. Yes, sir.

Q. Was anybody with him at any of these times that you saw him?

A. I don't recollect whether his wife was with him that time or not. Once his wife was with him, but I can't tell you which time, whether it was the second or third time his wife was with him.

Q. Was his wife assisting him any?

A. No, he was going by himself, he was taking his time.

Q. Did he have a crutch or cane?

A. He had a cane.

Q. One or two canes? A. One.

Q. Now, you cannot tell when you saw him the third time? A. No, I can't give you the date.

Q. With reference to Christmas you could not tell whether it was before or after Christmas?

A. I won't try to tell you that, for I can't tell you; I can't, that is all.

Q. And you could not tell whether the last time was before or after Christmas, even? A. No, I cannot.

(Testimony of witness closed.)

JOHN GOLDBERG, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live, Mr. Goldberg?
A. West Seattle.

Q. How long have you lived over there?

A. Ten years.

Q. Do you know Charles H. Newman?

A. The man that was injured? Yes, sir, I have known him pretty near four years.

Q. What is Mr. Newman's standing over there in the community.

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and because no foundation has been laid for such testimony, and because the witness has not shown himself to be competent to give such an opinion.

Q. Do you know what Mr. Newman's standing in the community over there is, whether it is good or bad, over there?
A. He is in good standing.

Mr. JUREY.—I move to strike out the answer for the same reasons.

Q. Stands well with all his neighbors?

Mr. JUREY.—I renew my last objection.

A. Yes, sir.

Mr. JUREY.—I move to strike the answer for the same reasons.

Q. What kind of a man was he at the time he was injured, and prior to the time he was injured; was he industrious or otherwise?

Mr. JUREY.—I renew my last objection.

A. He was a good man before, a good workman, a good carpenter.

Mr. JUREY.—I move to strike out the answer for the same reasons.

Q. Did he have work most of the time?

A. Yes, sir.

Q. What is his condition now, if you know Mr. Goldberg?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, because no foundation has been laid for the testimony of the witness, and because the witness has not been shown to be competent to state such an opinion.

A. I don't think he is able to work.

Q. Does he have the appearance of being crippled?

Mr. JUREY.—I object as leading.

A. Yes, sir, he walks that way.

Q. A man by the name of Murphy has testified that Mr. Newman worked on the grade over there, the street-car grade from the 12th to the 19th of March, and from the 4th to the 9th of April. Do you know anything about that? A. No, sir.

Q. Were you working on the plank road down there at that time?

A. I worked for the company and I might meet Murphy's gang, the most of them, on it but I never saw him with it.

Q. You never saw him with it? A. No, sir.

Q. Would a man in the condition Newman is in be able to work on a grade, grubbing and shoveling?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, because no foundation has been laid for any such testimony, and because he has not shown himself to be competent to answer the question.

A. No, sir, he would not.

Mr. JUREY.—I move to strike the answer for the same reason.

Q. You have seen Newman enough times to know that he is not able to work, haven't you?

Mr. JUREY.—I object as leading.

A. Yes, sir. I have seen him down there and I asked him how he was; and he tried to pick up something from the ground, a wrench that laid there, and he couldn't raise himself.

Q. He couldn't do it?

A. No, sir, had to take hold of the fence there and raise himself up.

Cross-Examination.

Q. (Mr. JUREY.) You say you live in West Seattle, Mr. Goldberg?

A. Yes, sir, I lived there for ten years.

Q. How long have you known Mr. Newman?

A. For pretty near four years.

Q. You are very friendly with Mr. Newman, are you not?

A. Very friendly with him all the time.

Q. I say you are very friendly with him, you are neighbors?

A. Yes.

Q. What time did they finish that plank road that you refer to?

A. The county road?

Q. Yes.

A. Well, I forget exactly the time, I think it was in May.

Q. In May? A. I ain't certain.

Q. It is not a fact they finished that road about the 16th of March?

A. I don't think they did so early.

Q. Are you sure they did not finish it about the 6th day of March? A. No, I am not.

Q. Now, your opportunity for seeing Murphy's men was while you were working on that road?

A. I was not working on the county road, I am working with that West Seattle Land and Improvement Company.

Q. On the county road?

A. No, working on the pump station; I never worked on the county road.

Q. Well, you saw the men while—

A. Well, they went by the pump house where I was working and I saw them.

Q. You say you saw them from the pump station?

A. I met them from the work when they were going to their work, you know; I would meet these men.

Q. You say you met them? A. Yes.

Q. Did you meet them every morning?

A. Yes, mostly.

Q. Some mornings you did not meet them?

A. Some mornings I went by the other road, you know.

Q. Well, did you meet them on the 12th, 13th, 14th, 15th, 16th; 17th; 18th and 19th days of March last?

A. Well, exactly the date I could not say, of course.

Q. You could not say that you met them on any one of those dates?

A. Well, I might meet them and I might not.

Q. You are not sure about that?

A. I could not say sure, as to dates.

Q. Where did you meet them?

A. I met them on the road there, on the plank road going out on the hill.

Q. How many were there?

A. Oh, sometimes they had eight or nine men.

Q. Eight or nine men?

A. Sometimes they only had five or six.

Q. Did you meet them on the bridge or going up on the hill?

A. I met them going up on the hill to their work.

Q. Going up the hill? A. Yes, sir.

Q. Now, when was it that you met them going up on the hill there, what month; wasn't that in May that you met them?

A. Well, I met them every month that they were working there some days.

Q. Well, did you meet them any time going up that hill in March? A. Oh, yes, I did.

Q. You are sure of it? A. Yes.

Q. You are sure you went to their work that way?

A. Yes, sir.

Q. Going up that hill that you refer to?

A. Yes, sir, I used to meet them there.

Q. Did you know any of the men?

A. I was not acquainted with any of them.

Q. You had no interest in Mr. Murphy's contract?

A. No.

Q. The way he was grading there?

A. No, sir.

Q. You had no interest in the men who were working on it? A. No, sir.

Q. Had no personal reason for observing them, did you, or keeping track or tab on them?

A. No, sir.

Q. Just simply looked at them through curiosity?

A. Just simply looked at them. These men was all from the employment offices in town here, I didn't know any of them.

Q. You didn't know any of them?

A. No, sir.

Q. Mr. Goldberg, the men could have gone to Murphy's work some other way, could they not, than the way you saw these men going?

A. That is the only way to go on the county road, the plank.

Q. They could have gone on the county road?

A. Yes, they sometimes went that way.

Q. And you would not have seen them if they had gone that way? A. I would have seen them, yes.

Q. How far would you have been from them there?

A. It was only about a couple of hundred feet from one road to the other road.

Q. Any other way they might go? A. No, sir.

Q. That country is all open there, is it not? Isn't it all cleared off so that they could have gone on the hill?

A. Well, they wouldn't want to go that way.

Q. Well, they could have done it.

A. Oh, yes, I suppose so.

Q. It would have been a little more inconvenient, but a man could have gone that way if he felt disposed to do it? A. Oh, yes.

Q. What is your answer?

A. Well, they might, but I don't think a man would go that way to work.

Q. Now, was not the crew of men that you saw going up the hill in March a surveying party?

A. No, sir.

Q. And not Mr. Murphy's men? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. He had a surveying crew there, did he?

A. Yes, he did.

Q. Did you know any of the men in the surveying crew? A. No, I didn't know them.

Q. How do you know whether they were his graders or his surveying crew?

A. Well, they have got different tools to carry.

Q. They carried their tools along every morning, did they? A. Yes, sir.

Q. You are sure of that?

A. Yes, sir. They had a mattock and shovel, each man had his mattock and shovel on his shoulder when he went to work.

Q. Now, is it not a fact that they left their tools up on the grade, and did not carry them backward and forward?

A. Well, I don't know whether they did or not.

Q. You do not know whether they did or not?

A. They carried them when I met them.

Q. And you are sure that was in March?

A. Yes, sir.

Q. And not in May?

A. Well, it might be in May too, I could not be sure.

Q. You are not sure whether it was March or May?

A. I met them both months, I guess.

Q. Well, wasn't it between the 1st and 10th of March

that you saw them carrying their tools backward and forward there?

A. I couldn't say exactly the date.

Q. Did you see them any time between the 1st and 10th? A. I guess I did.

Q. You think you did?

A. I am not certain of the dates.

Q. But you are sure that you saw them between the first and the 10th? A. Yes, sir.

Q. Did you see them go up over this hill you speak of between the 1st and the 10th? A. Yes, sir.

Q. Of March? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. As sure of that as of anything else you have testified to? A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) What do you remember, Mr. Goldberg, is the time they went to work? [Did you meet the men when they first started in to grading?

A. Yes.

Q. And you would see them from that time most every day to the finish?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. And you would see the men going to work with their shovels?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. Do you remember the date they started in to work over there on the grade?

A. No, I could not say the date exactly.

Q. You couldn't say the date? A. No.

Q. But you remember when they did start or commence to work? A. Oh, yes, I remember that.

Q. But whether that was the 1st or the 12th of March, you could not say?

A. I could not say, no.

Q. But they were working on the grade there in the months of March, April, and May, were they not?

A. Yes, sir.

Q. You worked at your same place at the same work during the months of March, April, and May, did you?

A. Right straight along all the time.

(Testimony of witness closed.)

Mrs. BERTHA PETERSON, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. How long have you lived over there?

A. Since November 10th I have boarded with Mrs. Jenkins.

Q. Are you acquainted with Mr. Charles H. Newman, the man that was injured on the "Blakeley"?

A. Yes, I am acquainted with Mr. Newman.

Q. Have you seen him frequently over there at his house or otherwise?

A. No, I can't say that. The only time that I have seen Mr. Newman was just when he was passing Mrs. Jenkins' gate; that is about all I have seen Mr. Newman.

Q. What, if anything, unusual did you notice in Mr. Newman's appearance?

A. Nothing unusual; of course, noticing that he was not a very well man to look at him.

Q. How did he walk, Mrs. Peterson?

A. Well, he walked like many invalids do, Mr. Martin.

Q. Did he have any indications of being crippled?

A. Why, in my estimation he looked so.

Q. Would he walk slow or fast?

A. Walked slow, I never saw Mr. Newman walk fast.

Q. Have a cane?

A. A cane. I have never seen him without a cane.

Q. Measured his steps?

A. Well, he walked very slow.

Q. Would he hold his back in the same position or—
Mr. JUREY.—I object as leading.

A. Yes, he would.

Q. His back was kind of—

Mr. JUREY.—I object as leading.

A. Well braced up.

Q. A braced position? A. A braced position.

Q. Now, did you see Mr. Newman in the month of April, Mrs. Peterson?

A. Well, I have seen Mr. Newman—I of course saw him quite often, because more or less I am in and out of the house considerable of late.

Mr. JUREY.—Of what year, Mr. Martin?

Mr. MARTIN.—1900.

Q. Now, did you call at Mr. Newman's house on any date in April, 1900, this last April?

A. Well, I called on Mr. Newman—well, I think it was in April that I called on Mr. Newman; I had a letter for Mrs. Newman.

Q. Have you got the envelope of that letter?

A. Yes, sir, I have it.

Q. Now, what date was that you called there, Mrs. Peterson? A. The 7th.

Q. The 7th of April? A. Yes, sir.

Q. About what time of day?

A. That was in the morning. We generally go for the mail in the morning.

Q. At what hour did you call at Mr. Newman's house?

A. I could not exactly say. The mail comes over at nine o'clock and we generally go between nine and ten.

Q. With reference to ten o'clock, how would that be with reference to the time that you called at Mr. Newman's house on the 7th of April?

A. It would be about ten o'clock, or a little after. I could not say positively about it.

Q. Ten o'clock in the forenoon. A. Yes.

Q. Have you the envelope?

A. Yes, sir. (Witness produces envelope.)

Q. Did you see Mr. Newman at that time?

A. I have seen Mr. Newman on that morning.

Q. On the 7th of April?

A. On the 7th of April.

Q. Where did you see him? A. On the lounge.

Q. In his house? A. In his house.

Q. At West Seattle? A. Yes.

Q. And you think that is the envelope that you—

A. This is the envelope, the letter, that I passed in to Mr. Newman.

Q. Was there anything with reference to this letter or envelope at the time you delivered it that—

A. Well the only thing was that it was directed to Mrs. Newman, and coming in to Mr. Newman's house in the morning I said, "I have a letter and it is for Mrs. Newman, and not for you, Mr. Newman." And Mr. Newman says, "Give it to me." And I says, "No, it is not for you, it is for Mrs. Newman." We were joshing in the house that morning.

Mr. MARTIN.—I offer this envelope in evidence.

Mr. JUREY.—Objected to as incompetent, irrelevant and immaterial and not properly identified.

(Envelope referred to received in evidence, marked "Appellee's Exhibit No. 1," filed and returned herewith.)

Q. You can examine Appellee's Exhibit No. 1, Mrs. Peterson, and see if that is the envelope on the letter which you delivered to Mrs. Newman?

A. Yes, sir, to Mrs. Newman.

Q. On the 7th of April? A. Yes, sir.

Q. It has the Seattle postmark on as it appears?

A. Yes, sir.

Q. And the West Seattle postmark?

A. West Seattle, yes.

Cross-Examination.

Q. (Mr. JUREY.) Mrs. Peterson, when was it you first saw him passing by Mrs. Jenkins' house.

A. Well, I could not exactly remember the date nor day. I could not.

Q. Was it this year or last year?

A. It was this year.

Q. This year?

A. Mr. Newman was in bed when I arrived here in November.

Q. In November?

A. It must have been around March, the latter part of March, it might be February, I couldn't exactly say—but it was this year, 1900.

Q. You couldn't tell whether it would be February or March that you saw him?

A. No, I could not.

Q. Nor whether it was those months or not, even; might it not have been January?

A. No, I don't think it was as early as January; it was later that I have seen Mr. Newman.

Q. But you could not locate the time any more definitely?

A. No, sir, I could not.

Q. You had no particular interest in Mr. Newman except just curiosity?

A. That is all.

Q. And seeing him pass?

A. That is all.

Q. You say that you are positive that you delivered this letter on the 7th?

A. The 7th.

Q. Of April?

A. Yes.

Q. Now, what is there, Mrs. Peterson, that would impress it on your mind it was the 7th rather than the 8th?

A. Well, how that came that I remember the time so well: Mr. Jenkins' cow calved that very morning, that I remember this letter so well; it was on the 7th of April, and that was the one way that I remember this letter that I had brought into Mr. Newman, and it of course had—

Q. Did you keep any record of that event?

A. No, sir, I didn't have any record of it.

Q. How is it that you are so positive that that event occurred on the 7th rather than the—

A. Well, it is like all—it seems like all birthdays, as I look upon it; you know we look upon a calf's birthday as well as our own. I have never been interested in cattle, but have been so ever since I have been residing at Mrs. Jenkins.

Q. Then, you locate the 7th day of April as the day that you—

A. Delivered this letter.

Q. Delivered this letter, principally from the birth of this calf?

A. Principally from the birth of this calf. Then, I had—

Q. And from the postmark on the letter?

A. Yes, sir.

Q. What day of the week was the calf born?

A. That was Saturday, the 7th of April.

Q. You have delivered other letters at Mr. Newman's?

A. Yes, sir.

Q. How frequently, Mrs. Peterson?

A. Well, I could not exactly say—well, I gave Mr. Newman his letter—well, I could not say what month it was in, but I delivered two letters at Mr. Newman's residence.

Q. Only two letters?

A. Two letters, that is all, yes, sir.

Q. When did you deliver the other?

A. Well, I could not tell exactly; it was, of course, the first letter, this is the last letter that I ever gave Mr. Newman.

Q. How long before you delivered this letter was it you delivered the first one?

A. When I delivered the first?

Q. Yes.

A. Between them two?

Q. Yes.

A. I could not exactly say.

Q. Was it a week?

A. Oh, it was longer than a week.

Q. Two weeks?

A. Well, I could not exactly say. It was a week or two weeks.

Q. A week or two weeks?

A. Well, I couldn't exactly say; it is impossible for me to say that.

Q. But you don't recollect that date?

A. No, I don't recollect at all, I didn't keep any account.

Q. Do you recall what kind of a looking letter it was, the first one? A. I could not.

Q. You could not? A. No.

Q. You had no interest in these letters except that—

A. No, I had no interest in the letters. We have a habit of going around and collecting the neighbors' letters and delivering them.

Q. You delivered other letters to other neighbors in the same way? A. Other letters, yes, sir.

Q. About the same time? A. Yes, sir.

Q. What do you identify this letter by as the one you delivered on the 7th of April, Mrs. Peterson?

A. Well, because it was the last letter I have given

Mr. Newman. Since then I have not given Mr. Newman any more letters.

Q. How do you recall the appearance of it?

A. Because it was addressed to Mrs. Newman, Mrs. Harry Newman.

Q. Is that the only way you identify it?

A. Between the josh as I was telling you before, as I explained before; as I said, of course, "I have a letter," and Mr. Newman said, "Give it to me." And I says, "No," and held it up and had a little fun over it.

Q. Then, the only peculiar features about the letter by which you identify it is that it was addressed to Mrs. Harry Newman?

A. Mrs. Harry Newman, yes.

Q. To whom was the other letter addressed that you delivered?

A. To Mr. Newman.

Q. Have you talked with Mr. and Mrs. Newman about the delivery of this letter since its delivery?

A. No, not since it has been delivered.

Q. You are quite sure you are not mistaken about that; you have not talked with Mr. or Mrs. Newman about the letter?

A. Of course, after I had delivered the letter we never had a subject of conversation on the letter, because it was none of my affairs, of course, about the letter; but just that day we joshed about the letter.

Q. Who asked you to testify as to the delivery of the letter?

A. Well, Mr. Newman asked me if I remembered the letter that I had brought him, and I told him yes, I remembered it.

Q. When was it he spoke to you about that, Mrs. Peterson?

A. Well, I don't—day before yesterday or two days ago, I don't exactly know just about—I think it was the day before yesterday.

Q. Well, you talked with him at that time about the delivery? A. Yes.

Q. And he recalled to your mind incidents—

A. About the letter, yes.

Q. About the letter? A. Yes.

Q. And did he recall to your mind any other facts or incidents to refresh your memory?

A. No, he did not.

Q. Did you talk to him at that time about any facts or incidents about the birth of the calf or anything of that kind?

A. No, I didn't talk with Mr. Newman about the birth of the calf, but when I came home to the folks, I told them, Mr. Jenkins and Mrs. Jenkins.

Q. I mean the last time that you talked to Mr. Newman, the other day when he asked you to testify?

A. Yes.

Q. Did he call to your attention any facts or incidents? A. No.

Q. By which to—

A. No, he just only asked me did I remember this envelope and I told him yes; that is about all.

Q. Did he show you this envelope at that time?

A. Yes.

Q. And told you that it was the one that you delivered the 7th?

A. Yes; he asked me if I remembered this letter that I made so much time about, and I says, "Yes, Mr. Newman, I do."

Redirect Examination.

Q. (Mr. MARTIN.) You are positive that is the envelope, are you? (Referring to Exhibit No. 1?)

A. That is the envelope that I gave to—

Q. The writing and everything? A. Yes.

(Testimony of witness closed.)

Mrs. MARY J. JENKINS, a witness called on behalf or the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you reside, Mrs. Jenkins?

A. I live at West Seattle, sir.

Q. How long have you lived over there?

A. Four years, sir.

Q. You are acquainted with Charles H. Newman, are you? A. Yes, sir.

Q. About how long have you known Mr. Newman, Mrs. Jenkins?

A. I have known him since we moved in West Seattle.

Q. What is Mr. Newman's standing over there amongst his neighbors, if you know?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and because no foundation had been laid for any such testimony, and the witness has not shown herself to be competent to give her opinion in such matters.

A. Well, we all call them—lots of good friends.

Mr. JUREY.—I move to strike the answer for the same reasons.

Q. He stands well with his neighbors?

Mr. JUREY.—I object on the same grounds.

A. Well with everybody, yes, sir.

Mr. JUREY.—I move to strike out the answer on the same grounds.

Q. You are acquainted with all your neighbors around there? A. Yes, sir.

Q. And you know they all speak well of Mr. Newman?

Mr. JUREY.—Same objection. A. Yes, sir.

Mr. JUREY.—I move to strike out the answer.

Q. Have you seen Mr. Newman lately, Mrs. Jenkins?

A. Yes, sir, I have seen him—well, not every day; quite often because he lives right near and they take milk from me; I have got a different—sometimes I run with the milk to them; sometimes they come down and I get a chance oftener to see him than other ones.

Q. Now, does Mr. Newman appear to be in a crippled condition.

Mr. JUREY.—I object as leading.

A. Always I seen him like that since he has been hurt.

Q. Do you take the milk up there to Mr. Newman's?

A. Well, I don't take it every day. If I think that the boy that is there isn't at home I take it.

Q. Do you remember seeing Mr. Newman any time between the 12th and the 19th of last March?

A. Out of doors, you mean?

Q. Yes, or anywhere?

A. Yes, I seen him in the house.

Q. What day was that you saw him in the house?

A. Well, I can't say, but I have been every other day, almost, in the house.

Q. You have been in the house?

A. Yes, I never have been in the house but I seen him.

Q. And you say you were in his house almost every other day? A. Every other day almost.

Q. Between the 12th and 19th of last March?

A. Oh, yes, sir.

Q. And you always saw him there?

A. I never was in the house without meeting Mr. Newman.

Q. Were you in his house between the 4th and the 9th of April last?

A. I don't know the dates, but I have been every other day almost there.

Q. And you think you were there every other day between the 4th and 9th of April?

Mr. JUREY.—I object as leading.

A. I am every other day, almost, there because I got to go with the milk.

Q. And you always find him there?

A. Yes, sir, but I have not been—sometimes he was in the dining-room and if I was very busy I would not go only just in the door of the kitchen, but I knew he was there and wished him good morning.

Q. You never saw him going out with a shovel and pick on his back to work on the grade, did you.

A. No, sir

Q. Is he in condition to do any work at all?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, no proper foundation has been laid for such testimony, the witness not being shown to be competent to testify.

A. I don't think so. I have not seen him handling anything, he has been laying down the most of the time I seen him.

Q. If he had been going to work on the grade you would have seen him, would you not.

A. I would have known that.

Cross-Examination.

Q. (Mr. JUREY.) Mrs. Jenkins, you said that you took milk to Mr. Newman's house?

A. Yes, sir, about every day. I don't say every day, when the boy is away I do.

Q. What boy do you refer to?

A. Mrs. Newman's brother.

Q. Mr. Craemer? A. Yes, sir.

Q. Why, was he away from home that often?

A. No, sir, he was in school, attending school. I always go there to see them on account of Mr. Newman's being sick. If I passed one day I would go the next, that is the way it would be in April.

Q. Now, you say you would not always go in the house when you would go to the house?

A. Well, I used to go in the kitchen, and I always wished good morning and got an answer, because I was sometimes there too early.

Q. Did Mr. Cooper sometimes furnish them with milk too?

A. Yes, Mr. Cooper has furnished them with milk too, we have both just served them with milk.

Q. Mr. Cooper has?

A. Yes, Mrs. Cooper gives them milk now, and I give them milk too, and buttermilk, and so on.

Q. Now, is there anything, Mrs. Jenkins, that impresses it on your memory that you saw Mr. Newman on the 13th, 14th, 15th, 16th, 17th, 18th or 19th of March last, or any of those dates?

A. I may happen to have seen him because I was there almost every other day.

Q. And the only reason that you can say that you saw him on those days was that you were there every other day?

A. Well, with milk or butter maybe, because I wouldn't leave him any more than that without going to see how he was.

Q. But you can recall no particular circumstances that would call it to your mind that you saw him on any of those particular days?

A. Well, I can't remember the day or remember the date, but I every other day, almost, go there. Because when I am sick, if I be sick or anything like that I call on Mrs. Newman, and I go there when they are sick.

Q. Are you sure that you went every other day, Mrs. Jenkins?

A. Almost every other day, but I didn't see—

Q. Almost every other day? A. Yes.

Q. You didn't go over every other day?

A. Well, almost every other day. I wouldn't pass more than two days sure.

Q. You say you did not see Mr. Newman every time that you went there?

A. I would not be any more than a day or two at the

furthest without seeing him, but I wished him good morning every day in the kitchen, and he returned it, for it wouldn't be very nice for me to go when I go in the morning to go to the room where they sleep, maybe.

Q. What time would you go in the morning?

A. Sometimes as late as half-past eight to nine, in that way, I couldn't say to the minute.

Q. Did you ever go any earlier than that?

A. No, sir, because I got my own house work.

Q. You say that you are very friendly with the Newmans?

A. Well, we are pretty friendly while we keep like that. We are not only just friends in our sickness, but we have got something else but business, by carrying milk; I never run there, I have got no time to run from one house to the other; don't think that, not at all. Of course, I have got no time to run to neighbors' houses to get nothing for it at all.

Q. When you are sick Mrs. Newman comes to you and helps you?

A. If I am sick or anything of that kind, or they are sick, but nothing else because I am always busy in my own house. I don't believe in running from one house to the other.

Q. And when they are sick there, you go there?

A. I just give a call, as a neighbor ought to.

Q. You feel very friendly towards the whole neighborhood?

A. I always want to be friendly with everybody.

Q. And the neighbors, including yourself, are particularly friendly towards Mr. Newman?

A. No, they are not. I got lots of neighbors there that I think just as much of, and I always be friendly with anyone. I don't run too much one to the other, but I give a call if a neighbor is sick; I always do that.

Q. I say all the neighbors around there are very friendly and very kind towards Mr. Newman since he got hurt?

A. As far as I know; I never heard anybody say anything against Mr. Newman, only that he was a good, true man.

(Testimony of witness closed.)

Mrs. ELIZABETH G. THOMAS, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. I live in West Seattle.

Q. Do you know Charles H. Newman?

A. Yes, sir.

Q. How close is your house to his house?

A. I guess about twenty-five feet, or thirty, something like that, I should think; I never measured it.

Q. Do you see Mr. Newman frequently?

A. Oh, yes, sir, see him every day.

Q. Did you see him at any time from the 12th to the 19th of March last? A. Yes, sir.

Q. Did you see him most every day between the 12th and 19th?

Mr. JUREY.—I object as grossly leading.

A. Yes, sir, I seen the man most every day.

Q. Did you see him at any time between the 4th and 9th of April last? A. Yes, sir.

Q. Now, where did you see him at those times, Mrs. Thomas?

A. Well, sometimes I would go in the house, frequently go in his house.

Q. You say you do frequently go in his house?

A. Yes, sir.

Q. And did you see Mr. Newman in his house at that time?

A. Yes, sir, I saw him going to the garden.

Q. You can see right into his house from your house, can you not? A. Yes, sir.

Q. Now, what, if anything, is there unusual about Mr. Newman's condition at the present time.

A. Well, he feels pretty bad, that is all I know.

Q. Does he look as though he were crippled?

A. Yes, sir, he looks pretty hard to my idea.

Q. He has every indication of that has he, of being a cripple? A. Yes, sir.

Q. And you are positive you saw him every day between the 12th to the 19th of March last?

Mr. JUREY.—I object as grossly leading.

A. Yes, sir, I saw him there most every day?

Q. At home there? A. Yes, sir.

Q. About what hours would you usually see him, Mrs. Thomas?

A. Well, I saw him in the mornings sometimes, I can't tell you exactly—other times in the afternoon.

Q. State whether or not you would see him more than once on any one day? A. Yes, sometimes—

Q. How frequently would you see him?

A. Sometimes I would see him twice, I can't remember exactly how many times, but I saw him very often.

Q. Would you not see him seven or eight times from your house to his house per day?

Mr. JUREY.—I object as grossly leading.

A. Well, I can't say that, I guess I didn't pay any attention, but sometimes I happened to see him at the window.

Cross-Examination.

Q. (Mr. JUREY.) Mrs. Thomas, you say you saw him almost every day between the 12th and 19th of March?

A. Yes, sir.

Q. Now, what is it that impresses on your recollection that you saw him on those days, or any of those days?

A. Well, I saw him all the time, just the same, I saw him every day all along.

Q. Then, you saw him, you say, most every day between the 12th and the 19th of March? A. Yes, sir.

Q. Simply because you usually saw him every day?

A. Yes, sir, most every day I saw him.

Q. There was no particular occurrence or incident that happened on those days? A. No, sir.

Q. That would connect it with the seeing of him?

A. No, I go over there very often, most every day.

Q. Was there anything in particular that happened on the 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th days of April that you connect with seeing Mr. Newman on those particular days?

A. Well, I saw him every day; that is all I can say.

Q. That is the only reason you say you saw him on any of those days? A. Yes, sir.

Q. Because you saw him every day?

A. Yes, I am home every day and I saw him most every d̄ay.

Q. You testified, I believe, that he was a cripple?

A. Yes, sir, he is really bad, in my idea.

Q. You simply judge from what you saw, and what he and others have said to you, do you not?

A. No, what I saw myself. He is very crippled to my idea, he always uses a stick and goes very slow.

Q. You judge he is a cripple by his using a stick and by the way he goes?

A. Yes, sir he is in a bad fix; I don't think he ever will be able to work, in my idea. That man has suffered more than anybody knows.

Q. You judge from appearances?

A. Yes, sir.

Q. You are not a physician or surgeon?

A. I used to go there and see, back and forth, the way he used to groan and suffer.

Q. He has been going out here considerably, has he not?

A. No, I have not seen him out very much.

Q. You haven't seen him out very much?

A. Just going a little.

Q. And he has been going down on the beach, has he not?

A. I don't know, I didn't see him go down on the beach.

Q. You don't know whether he has been going down on the beach or not?

A. No, I have not seen him go out to the beach. He was on the beach some time ago, and he was pretty bad

then, and he had to climb to the fence to try to climb up the day I saw him.

Q. He had to do what?

A. He had to catch hold of the fence to try to climb up home; he was so tired, I should think by the way he was walking.

Q. You saw him that day?

A. Yes, sir, I saw him.

Q. Don't you know he has been going up and down the hill there at West Seattle?

A. I don't know much about that, but I saw him every day around the house.

Q. Don't you know that he has been going backward and forward over here?

A. Yes, I know that he has been in Seattle.

Q. How often has he been over to Seattle?

A. Oh, I couldn't tell you.

Q. Then, he could have come over frequently without your knowing it?

A. No, sir, he could not have come over frequently and I not know it. I saw him every day.

Q. Well, has he been coming over to Seattle frequently the last month or two months? A. No, sir.

Q. He has not? A. No, sir.

Q. How many times has he been over here?

A. Well, I can't tell you exactly how many times.

Q. Well, about how many times?

A. I don't know exactly about how many times. I don't think he has been—

Q. When did you first see him out?

A. I think it was some time in February, I ain't sure.

Q. Some time in February?

A. I think it was, I ain't sure, I ain't positive.

Q. Where did you see him out at that time?

A. He went to the garden.

Q. Anyone assist him in walking?

A. Oh, he was catching hold of things to get around with one hand, and then the other had a stick.

Q. Now when was the first time that you saw him sitting up after he was hurt?

A. Well, I can't tell you exactly the date.

Q. Well, was it before Christmas? A. No, sir.

Q. You are sure of that? A. Yes.

Q. Well, how long was it before you saw him going out in the garden that you saw him sitting up the first time?

A. Well I didn't pay no attention to the days or nothing like that, what it was.

Q. Mrs. Thomas, has there ever been a day since the first of March that you have not seen Mr. Newman.

A. How?

Q. Has there been one day since the first of March that you have seen Mr. Newman?

A. No, I don't think so.

Q. Then, you think you have seen him every day?

A. Yes, sir.

Q. Did you see him the day he came to Seattle?

A. Well, the man ain't supposed to tell me every time he goes to Seattle, but I saw him around the house every day.

Redirect Examination.

Q. (Mr. MARTIN.) Would it be possible for Mr. Newman to work on the grade over there six or seven days at a time without your knowing it?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, because it is a question that the witness cannot possibly answer.

A. No, sir.

Q. You would have seen him if he had been, would you not? A. Yes, sir, of course I would.

Q. Your doors are right close together?

A. Yes, sir, I can see in his house from my house.

Q. Right through the window?

A. Yes, sir, and the open door was right into their kitchen.

Recross-Examination.

Q. (Mr. JUREY.) Your family and the Newmans are very friendly, are they not?

A. Yes, we are neighbors and we live peaceable.

Q. Very warm friends?

A. Well, yes, sir, we are neighbors and live peaceable, that is all I can say.

(Testimony of witness closed.)

Mrs. MARY J. JENKINS, recalled on behalf of appellee, testified as follows:

Cross-Examination.

Q. (Mr. JUREY.) When did you first see Mr. Newman sitting up, Mrs. Jenkins, after he was hurt?

A. I can't name the date, but—

Mr. MARTIN.—You asked her that several times, and I object to it for that reason.

A. (Continuing.) Yes, I can't name the date and tell you so, but I did always see him lying down on the lounge and he may have sat up before I can say.

Q. Did I ask you the first time you saw him sitting up and going out?

A. I don't know whether you did or not.

Q. I don't think I did.

Mr. MARTIN.—Well, go ahead.

Q. You are not sure the first time you saw him sitting up after he was hurt?

A. No, I don't know the date, sir.

Q. Now, with reference to Thanksgiving?

A. Oh, it was late in the spring.

Q. Late in the spring? A. In the spring, yes.

Q. That you first saw him getting up?

A. I have seen him most laying down, but he was different than he was when he was more sick, yes.

Q. You mean he was confined to his bed until late in the spring? A. Yes.

Q. Constantly, continuously?

A. Well, I happened to go over when maybe he was laying down, I couldn't say, but I saw him around the house may be a couple of times, I don't know.

Q. Then, you say the first time you saw him out was along late in the spring? A. Yes, in the spring.

Q. He goes around a good deal now, does he not?

A. No, sir.

Q. Doesn't he go down to the beach? A. No, sir.

Q. Doesn't he frequently walk up and down the hill there?

A. Well, he has been in our house about twice, and he didn't stay a long time because he couldn't hold himself up; he had to go back pretty soon, that is all.

Q. Well, could he walk up and down the hill there at West Seattle?

A. That is more than I can tell; I didn't take any notice; I am always busy. I am working.

Q. Do you think he is able to?

A. I don't think so; he can't sit in the same position only a very short time, he is always wanting to get rest.

Q. Do you know of his coming over to Seattle any time the last month or so?

A. I don't know anything about that, sir; I never seen him.

Q. Then, if he has been coming over to Seattle during the last month or so you don't know anything about it?

A. I don't know nothing about that, sir.

Q. If he has been walking up and down the hill there you know nothing about it?

A. I have not seen him only just a couple of times in our house.

Q. Well, if as a matter of fact he has been walking up and down the hill and coming over to Seattle—

Mr. MARTIN.—I object to any such question as that as improper, and as not proper cross-examination at all, and as—

Mr. JUREY.—I object to counsel interrupting me in the midst of a—

Mr. MARTIN.—And simply supposition of a possibility upon a possibility that the witness says she knows nothing about, and I move to strike out the question and answer.

Q. Then, if he has as a matter of fact, been in the habit of walking up and down the hill and going down on the beach and going over to Seattle, he is stronger than you think he is?

A. I never have seen him do so.

Q. I say, if as a matter of fact he has been doing this, he is stronger than you think he is?

A. He can't do it for a matter of fact, not to my knowledge.

(Testimony of witness closed.)

JOHANNA McDONALD, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) How long have you lived at West Seattle? A. Since I came from the east.

Q. How long ago was that?

A. That is two years last October.

Q. Do you know Charles H. Newman?

A. Yes, sir.

Q. And his family? A. Yes, sir.

Q. How long have you known them, Mrs. McDonald?

A. Ever since I came to the West.

Q. You knew him before he was injured?

A. Yes, sir.

Q. How far do you live from where Mr. Newman lives?

A. Well, I don't know exactly the measurement, but I can talk to them from my house. My kitchen faces their house, I can see—

Q. Right across the street, is it? A. Yes, sir.

Q. About the width of the street?

A. Well, a little more than the width of the street.

Q. Now, have you called in at Mr. Newman's house frequently? A. Yes, sir.

Q. Since he has been hurt?

A. Yes, sir. Very much when he lay abed.

Q. Do you remember seeing Mr. Newman any time between the 13th and the 19th of last March?

A. I have seen him out and around.

Q. Did you see him out and around his house at that time?

A. Yes, sir, every time, I think, he was out, I have seen him standing around in the yard. That is, when he was able to come out.

Q. When it was nice days he would come out and try to get a little exercise, would he?

Mr. JUREY.—I object as grossly leading.

A. Yes, sir.

Q. And you would usually see him?

Mr. JUREY.—Same objection.

A. Yes, sir, I couldn't help seeing him if I was looking through the window.

Q. Would there be a period of six days elapse at any one time there in March that you would not see him?

Mr. JUREY.—Same objection.

A. I could not exactly tell you the days between the time I have seen him, but I have seen him very often. I have got a cow and I used to carry the milk over to him to drink; they didn't buy it, that is, but if I could spare it I used to bring it over to him to drink.

Q. State what, if anything, unusual there is in Mr. Newman's appearance from a well man, a strong man?

A. There is a good many things and it don't seem to

me like Mr. Newman is getting a bit better. The reason I have never went there so much since he got up he seemed so disappointed because he gained so little; he seemed to care so little to talk, and he felt so bad because he gained so little.

Q. Is he in a crippled condition? A. Yes, sir.

Mr. JUREY.—I move to strike out the answer because the witness has not been shown to be competent to testify to such a fact.

Q. You have seen the way he gets around, have you?

A. Yes, sir.

Q. Now, describe as near as you can the motion he has to go through and the efforts he has to make in getting around?

A. Well, of course, when he is walking he walks like a man that was very bad with rheumatism, that was badly stiffened up with rheumatism; I have seen only one man that has walked the way Mr. Newman does, and that was a good many years ago; he walks as though he was stiff, couldn't move himself, takes short steps and very slow, and when he passed by his own door I remarked that he takes a piece that stands by his front steps, just to haul himself up, and I have remarked that lots of times because I have always pitied the man, he seems so different from what he used to be. He was a very smart, active man.

Q. He used to be a very smart, active man?

A. Yes, sir, that is what I mean.

Q. And you say that in getting up the steps he gets hold of a piece that is there by his front door?

A. Takes hold of this piece at the front door and hauls himself up on that, besides having a cane in his hand.

Q. Did you see him do that when he did not know—

A. I have seen him do it when he knowed nobody was around. Of course, I was right in my own house, right opposite his, and I would be standing looking out of the window when he would be coming up to his own house and he would not know anybody was around. If I was anywheres around the kitchen or around the window I can't help seeing him.

Q. Mr. Murphy has testified that Mr. Charles H. Newman worked on the grade wheeling a wheelbarrow and shoveling and grubbing from the 13th to the 19th days of March last. Could he have done so without your knowing it?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, no foundation has been laid for any testimony, and the witness has not been shown to be competent to testify to such facts.

A. No, sir, I don't think he could lift a shovel, let alone lifting it with anything on it. I don't think the man could stoop down in that way so that he could lift a shovel.

Mr. JUREY.—I move to strike out the answer for the same reason.

Q. If he had been going to work on the grade there at that time during those days, you would have known it, would you not?

A. Yes, sir.

Q. You could not help but seeing him?

A. No, sir, he could not have gone without my seeing him some time in that time.

Q. And in April the same.

A. In April the same.

Q. Is Mr. Newman required to wear a jacket, a steel jacket? A. Yes, sir.

Q. To support his back?

A. Yes, sir.

Q. Can he stoop over to pick up anything?

A. I never have seen him do so. Of course, the man, all the times I have seen him, Mr. Newman was laying down or standing in his own yard or walking about. I never saw him trying to stoop over and try to do anything.

Cross-Examination.

Q. (Mr. JUREY.) Mrs. McDonald, you say that you have seen Mr. Newman coming up on the porch by taking hold of the pillars when you knew that he knew nobody saw him?

A. Yes, sir, that I didn't see him.

Q. How do you know that he knew nobody saw him?

A. Why, of course I didn't see how he should know that I was watching him, how he walked.

Q. Now, is it not a matter of fact that you don't know whether he knew whether anybody saw him or not?

A. Of course, I don't know; neither do I know how he should know that anybody was watching him, because I don't think he cared whether they did or not.

Q. You don't think so? A. No, sir.

Q. Now, who required him to wear a steel jacket?

A. I couldn't tell you, I only seen it on him.

Q. How do you know he was required to wear it?

A. Because I have seen it on him laying down.

Q. That is the only reason you know?

A. Well, I know he is not able to go about and work and I know he has to have a support.

Q. How do you know he is not able to go about and work?

A. I don't believe anybody would be willing to make believe a man that has been smart and active and willing to work, like he was, I don't believe he would be willing to lay down, that anybody would and make believe that he couldn't work, because I think he would rather be well and attend to his work. That is why I think so. I take it in my own case, I am sure I wouldn't lay abed if I didn't have to.

Q. And that is the reason you think he could not work any?

A. I have a good many reasons to think so.

Q. What are the reasons?

A. The way I have seen the man going around, and the reason when I visit him, and visit his house, and see him laying down, and the man ain't a bit like he used to be.

Q. Well, you make up your opinion from his actions and conduct, and what he says? A. Yes, sir, I do.

Q. You are not a physician and surgeon?

A. No, sir.

Q. You never made any surgical examination of him?

A. No, sir.

Q. Now, you say that he could not have gone to work at any time in March or April without your seeing him?

A. I don't think so, not without my seeing him sometime through the day. Anybody that lives so close to him as I do, and most always when he is out I am very apt to see him because my kitchen and my work is on

that side of the house and that is where I most always stay, where my work is. I don't very often go and sit down in the other part of the house.

Q. You don't mean to say it is impossible for him to go away from his house without your seeing him?

A. Oh, it may not be impossible some times, but not very often. I don't think he could very well go away when I am on that side of the house, for him to get clear away out of my sight without my seeing him some time.

Q. But if you were on the other side of the house?

A. If I was on the other side of the house I couldn't see him, no.

Q. Is there anything that impresses it on your memory that you saw him on March 12th, 13th, 14th, 15th, 16th, 17th, 18th, or 19th?

A. No, sir. I wouldn't make no dates at all, because lots of days in March and April I would go and visit the house and see him there, and lots of days I have went to the house, she wasn't at home, but she was in the neighbor's, and he would call from his room for me to come in, and I saw I had no business there if she wasn't there, and I just looked in at him, and he was always in a miserable condition. He always had a cloth with cold water covering his head.

Q. You don't mean to say that you have seen him every day?

A. No, sir, I don't; not at all. I have not seen him every day. I went to his house there; I often went to the door, and didn't see him, if I had business there.

Q. You feel very kindly towards Mr. Newman, do you not?

A. Yes, sir, to all my neighbors. I always feel to anybody that is sickly anyway.

Q. Mr. Newman has been going out around here lately, has he not, quite frequently?

A. No, sir, I have not seen Mr. Newman out. I don't know when, I couldn't give you any date at all when I seen Mr. Newman out.

Q. Don't you know he has been down on the beach here quite frequently lately?

A. No, sir, not that I have seen him. I have never seen him down on the beach.

Q. Don't you know that he has been walking up and down the hill there at West Seattle? A. No, sir.

Q. Don't you know he has been coming over to Seattle quite frequently the last month or two?

A. Not the last month, for I don't think I have seen him out the last month. Of course what he has been before then, he might come over to Seattle once in a while, I don't know where he was going, but I knew he would take a little walk down the hill, and where he went to, that I don't know.

(Testimony of witness closed.)

Mr. MARTIN.—I will ask the commissioner to go over to Mr. Newman's house and take his testimony over there on the 27th, if possible.

Mr. JUREY.—I object to the taking of the testimony of the appellee away from the commissioner's office, for the reason that it is abundantly shown by the testimony on behalf of appellant that the appellee is able to appear in court.

Mr. MARTIN.—I will give notice that I will close my case on the 30th.

Mr. JUREY.—I desire to state to proctor for appellee that the appellant will have some testimony in rebuttal and will offer it on the 30th, if he will consent to its being taken within the time allowed to him, otherwise we will take it after the 30th.

Mr. MARTIN.—The order requires you to put in your testimony by the 15th of June, and not after, and I shall object to your putting in any rebuttal.

At this time further proceedings were adjourned, to be taken up by agreement.

West Seattle, June 27, 1900.

Continuance of proceedings pursuant to adjournment, at residence of appellee, 2 o'clock P. M.

Present: William Martin, Esq., of proctors for appellee; John S. Jurey, Esq., of proctors for appellant.

CHARLES H. NEWMAN, appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) State your name in full.

A. Charles Henry Newman.

Q. You are the appellee in this case?

A. Yes, sir. They call me Harry for short. Henry is my name.

Q. I will ask you, Mr. Newman, to look at Appellant's Exhibit "E." A. What does that mean?

Q. Did you ever see that before, that exhibit?

A. No, sir.

Q. I will ask you, Mr. Newman, if you wrote that name "John Newman" on the end of that exhibit?

A. No, sir. (Laughing.)

Q. Did you ever see that paper before?

A. No, sir.

Q. I will ask you to examine Appellant's Exhibit "D" and state if you ever signed the name John Newman under the words "Received payment," on that exhibit?

A. No, sir, never.

Q. I will ask you if you signed the words "John Newman" on the end of that exhibit? A. No, sir.

Q. I will ask you if you ever saw it before?

A. No, sir.

Q. I will ask you to examine Appellant's Exhibit "C" and state if you ever saw that exhibit.

A. No, sir.

Q. I will ask you to examine Appellant's Exhibit "B" and state if you ever saw that before? A. No, sir.

Q. I will ask you if you signed the name "H. Newman" under the words "Received payment" on Appellant's Exhibit "B?" A. No, sir.

Q. I will ask you if you ever signed the name "H. Newman" on the end? A. No, sir.

Q. I will ask you if that is your signature (showing)?

A. No, sir, I can write better than that.

Q. I will ask you to examine Appellee's Exhibit No. 1, the envelope? A. Oh, yes, I remember that well.

Q. Did you ever see it before? A. Yes, sir.

Q. Where did you see it?

A. Mrs. Peterson, living across the road here fetched that in.

Q. When did she bring that in?

A. Somewhere in—now, hold on, it is quite a while ago.

Q. Do you remember about when?

A. Yes, sir, I guess somewheres about March, somewhere about there.

Q. Do you remember any occurrence or any conversation the time that was brought in?

A. Yes, sir.

Q. What conversation, if any, did you have with Mrs. Peterson?

A. She came in and said, "I have got a letter for you; have got a letter for madam." And I says, "Give it to me." It was addressed to my wife, and I says, "Give it to me." And my wife was in the kitchen, and she said that it was not addressed to me, and I says in a joking way "I receive all the mail." And she said that she would give it to my wife, to the one that it is addressed to. I was lying on the lounge like I am now.

Q. You do not remember the day of the month?

A. No.

Q. I will ask you, Mr. Newman if—

A. (Continuing.) Hold on, I can tell you it was on a Saturday, yes, it was on a Saturday.

Q. I will ask you, Mr. Newman, if you worked on the street car grade over here at any time in the month of March, 1900?

A. No, I have never been that far.

Q. I will ask you, Mr. Newman, if you worked on the street car grade over here at any time in the month of March or April, 1900.

A. I have never been that far to know where the grade is begun.

Q. I will ask you if you ever performed any labor of any kind whatsoever since you were injured?

A. Not a hand's stroke.

Q. I will ask you if you are able to perform any labor?

A. I cannot do that. I wish I was.

Q. I will ask you if you suffer any pain at the present time from your injuries?

A. I am suffering right along, sir.

Q. In what way?

A. Oh, if I start to move around a little twist or a little jar—I am suffering a good deal, but when I am lying here it is a steady continual pain.

Q. Have you any use of your back?

A. No, sir, I have a jacket around me.

Q. You have a jacket on?

A. Yes, sir, a steel jacket it is held with steel.

Q. Do you wear it all the time?

A. All the time, yes; I sleep with it. At first I used to take it off nights but in sleeping and twisting around it makes me have pain, and I keep that on and it keeps the body in one position. When I twist myself I wake up before the pain strike me so much.

Q. I will ask you if you have any trouble with any organs of your body?

A. My waterworks are in bad shape, my bladder.

Q. How long have you been that way?

A. Since I have been hurt. At first it used to pain me awfully, I could not make water at first and I used to have lots of trouble, but I have used capsules and they give me some relief, but the pain is there all the time, and my left side, I cannot lay on it at all, that is from the hurt, I must have struck the left side of the back. The left side is affected bad, I cannot lay on that side, I have to lay on the right side.

Q. Do you know as your kidneys are injured much?

A. That will be my kidney.

Q. Have you a boat down here at the beach?

A. I have two.

Q. Describe them, about what kind of boats they are?

A. One is a steamer, a little tow boat.

Q. About how long is it?

A. About 42 feet long, draws about 4 1-2 feet of water, about 5 feet when loaded down with fuel and ready to go to work.

Q. What is the other boat? A. A sailing boat.

Q. How large is that?

A. Well, I am not exactly sure how long she is, but she is over 20 but not 30. She has got a cabin on her and I use her for pleasure trips, to go anywhere.

Q. Has this boat been in use any since you were injured?

A. No, sir, they have been an expense, I have been paying out for them to be looked after all the time.

Q. Who did you have looking after them?

A. Charles Masculin.

Q. Have you had them painted?

A. Yes, sir.

Q. Who painted them?

A. Charles Masculin and my brother in law here; he was with him there.

Q. Did you do any of the painting on these boats?

A. Not a stroke, sir.

Q. Did you state to a man by the name of Michael Kelly on the 23d day of April, 1900, that you did not suffer any more pain from your injuries?

A. I never stated that to any man at any time.

Q. Did you pick up a box, and were you painting one of these boats on the 23d day of April?

A. Never did sir.

Q. I will ask you if you were down near the bath-house on the beach on the 14th day of May last?

A. Me? No, sir; I have not been down there for a long time on the beach—whereabouts?

Q. The bath-house at West Seattle, around the point?

A. I have never been down there since I have been hurt; I have never been that far around the point.

Q. Are you acquainted with a man by the name of Samuel F. Coombs?

A. No, I am not acquainted with him; I know him by sight. He lives here.

Q. He lives over here, does he not?

A. Yes, sir. And everybody knows him by sight that lives here.

Q. He swore to an affidavit in which he stated he saw you walking up the hill here from the beach, and that you walked as well as he could, or any other strong man.

A. That is a lie.

Q. I will ask you if Mr. Coombs came to you at any time concerning this case of yours?

A. Yes, sir, he came several times to me.

Q. He is a sort of a justice of the peace over here, is he not?

A. They call him Crazy Coombs; that is all that he goes by more than anything else, Crazy Coombs.

Q. What was his business in coming to you about?

A. Somewhere about April, about the middle of April, pretty close to the middle of April, he came to me.

Q. What did he say to you?

A. I took a walk outside here; it was a nice day, and I rested by the bend here, just right down here, about five minutes' walk from here, when he came out to me and asked how I was getting along. And I told him that I was in pain, but just got out to exercise. He said he thought that would do me lots of good. And he said he thought if I could go somewheres to the Hot Springs it would do me still more good; and I thought so too, but my means were getting kind of scarce and I had to look out for my family. And my expenses and doctor's bills was kind of getting me short. Well, he said he thought that would be the advisable thing, if I could take the Hot Springs in. So he asked me who my attorneys were, and I told him your name, and he asked your first name, and I told him Mr. Martin, and he said that this case should have been settled long ago, and he said that he had kept his eye on it, or kept posted a little; and that this case was very long delayed and it should have been through, and so I told him I did not know a thing about it, but I thought myself it was getting along pretty long, and I was after my attorney, but he said he was doing his best to make it come to an end. So one day Coombs asked me if I would show the agreement that I had with my attorney, and I told him I had a written agreement, and he said if I would show him it he would get another attorney that would push things through, and he would post me on everything that was going on, and he would let me know everything that was going on.

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, hearsay, and not responsive to any of the

issues in the case, and move to strike the answer of the witness for these reasons.

Q. Go on and tell everything.

A. I told him that I did not know anything about the law, but I told him of course it was a long time coming to an end, and he said if I could just go to the Hot Springs that would be the best thing that I could do; and I told him that if I had the money to do it that I would go just as soon as I could. And of course I looked at him as a little bit of a crank himself; he is called Crazy Coombs, and I did not think anything of it. Then, a few days afterwards, about three days afterwards, I took a walk out to the end of the road down here, where there are some little trees hanging over the road, and sat down there, when he came again. He asked me how I was getting along, and I told him that I was slowly, and he said that he had seen—that he was authorized to come to settle my case, if I would meet the company—the company would meet me half way, if I would accept that. He had full charge of it, and I simply laughed at him. I told him, I says, “Who hired you?” He says, “Mr. Metcalfe authorized me to come over here,” and offered me that the company would meet me half way. He told me it was best for me to accept, and if not the company will fight you ten years and you will not get a cent of money. And I told him I didn’t know. I says, “I have got attorneys.” And he says, “You can go and get your money and settle up, and your attorneys can go to hell,” like that. I told him then that I didn’t know nothing about the law, but if he had any proposition to make to go and see my attorneys and he will come and see me

and talk to me as to what can be done. That I needed money very bad, but still I had a little left to go along on. He said, "The attorneys will boozle you around and the first thing you know you will not get anything." And he asked if I knew you well, and I told him that was all I knew of you you collected for me over \$200 that was coming to me for wages; and that you had been recommended to me by Captain McPhie, and he said that you were to be trusted, or something like that, and that you were an able man, and to go to you. I told him about my trouble to get my money, and I wanted to get a good attorney. And so that is all that I told him, that you collected the money for me, and that is all that I knew about you.

Mr. JUREY.—I move to strike out all the witness has stated, for the reason stated in my last motion.

Q. What did he say about the attorney?

Mr. JUREY.—I renew my last objection.

A. He told me to show him the agreement I had with you, and that he would get me another attorney that would push the case through.

Mr. JUREY.—I move to strike that out.

Q. He is the same man who made this affidavit in this case, the same Samuel F. Coombs, is he?

A. How do you mean by affidavit?

Q. He signed a paper to the effect that he saw you walking up hill.

A. Yes he is the same man; there is only one Coombs here, so far as I know.

Q. Has anybody else come to see you and inquired about how your case was getting along, and if so, who?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and not in response to any issue in the case, and hearsay.

A. There was many of them here. They were like dogs bothering door here; people that I had never known or never heard of them, came over and wanted to know how my case was. People that I had never seen before and who I would not know if I saw them again.

Mr. JUREY.—I move to strike the answer, for the reasons stated in my objection.

Q. Did you know a man by the name of Gardner, a rather tall, smooth-faced man with dark eyes?

A. No, sir.

Q. Do you remember anything about two men and a stenographer coming over here? A. Yes, sir.

Mr. JUREY.—I object to this for the reasons last stated.

Q. Do you know a man by the name of Kelly?

A. No, sir.

Q. There were two men and a stenographer came over? A. Two men and a woman, yes.

Q. What did that man have to say to you?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial.

A. The great big, tall man sat in front and another man sat back of me, and I did not see him. And there was a lady came with them; I seen that it was a young lady. And I was lying in this same position here, and they were back of my head. This tall man came and knocked at the door and wanted to know if Newman lived here, and walked right in and sat right here, and asked my

name, asked if my name was Newman, and I told him yes. He wanted to know if I was suing the "Blakeley." I looked at the man, and then he asked this man here that sat back of my head if I had sued the "Blakeley," and the man said no, that I had sued the "Homer." And he asked if I was hurt on the "Blakeley," and I simply looked at him; I did not answer him. He told me that there was some wrongs done to me, and he wanted to correct it, and he wanted to know and he had to know it. And he said, "There is my stenographer, and you put down, word for word, what this man Newman says." And he says, "I want to correct this thing and I want to know it." And he said he was authorized to come here and straighten this thing up. And I simply looked at him. Then he asked me a question, if I belonged to the Knights, and I told him no. Then he wanted to know about painting some boat, and I told him.

Q. What else did he say about the Knights, what did he mean, the Knights of Pythias?

A. He wanted to know if I belonged to No. 5, and he said that he belonged to No. 5, and he insisted on my telling him what wrong had been done to me, and he was here to correct this thing. And he told this woman to take down every word, that he did not come here like a sneak. He says, "I come here like a man, and I am on your side. My name is Frank," something like that, as near as I can remember. He said he did not come here like a sneak and he came like a man here, that his name was Frank. I told him that he would have to go to my attorney, that he would answer any questions that he asked him. Well, he tackled me again, and asked if I

did not belong to the Knights, and I told him no. And then he asked about some waterworks, how the water system is, and I did not know a thing about it, and I referred him to the wife. He spoke to the wife then, and asked me again, and I says, "I cannot talk to you about this." I says, "You go to my attorney and he will answer you all the questions." I told him that he could tell him anything, that was his part of the business, and I did not know anything about it.

Q. Then, did they go away?

A. Yes, they thanked me for the rest they had had here, and they had complained about coming up the hill, and I told him I did not mind the thing before I was hurt, coming up the hill, and they thanked me for the rest, and went off.

Q. That is to say, you did not mind coming up before you were hurt?

A. Yes, sir; I told him I did not mind it a bit, coming up, before I was hurt.

Mr. JUREY.—I move to strike out all the statements of the witness as incompetent, irrelevant and immaterial, hearsay, and not responsive to any of the issues in the case.

Q. Do you remember a tall, sandy sort of a fellow coming over here, by the name of Murphy, some time ago?

A. A tall, sandy man?

Q. The same man that came in here not so very long ago again to identify you?

A. Well, I do not remember him; but my wife came in here and said there was a man came in here and I was lying down in the position I am now, reading; and he came in here.

Mr. JUREY.—I object to what the witness is stating as hearsay.

A. (Continuing.) He said he wanted to see me, and the wife came in and told me a man wanted to see me, and I says, "He can come in." He stood about sideways here. He said that he was foreman of the grade here, and they were bothering him every day about me, that I was working there, and he says he wanted to go to Alaska, and they even threatened to stop him from going there, so he made up his mind to come up and see me, and I told him that was all right, and I says, "What are they bothering you about?" And he says, "About you working on the grade for me," and he said he wanted to see if I was the man. And he said, "I never seen you before." He said, "I never seen you before" twice. He went out and came back again from the door, and he says, "I never seen you before," and then he went out. Then, when he was here the second time then the wife recognized him, but I could not remember him.

Mr. JUREY.—I move to strike out the entire statement of the witness as incompetent, irrelevant and hearsay.

A. (Continuing.) The wife was here at the same time and spoke to me.

Q. You say there have been quite a number of people around to see you?

A. Oh, I had to keep the doors locked; when I had the doors locked they tried to open the windows here—one day they shoved the window up to see if I was in.

Q. Do you remember a little short, light, smooth-faced fellow who came over here one day to buy a boat or sell a boat for you?

A. There was a man, I could not tell you how he looked now—but there was a man that wanted to sell the boat, or had the sale all ready—he was selling the boat on commission.

Q. Did you ever see him before?

A. No, sir. I never seen him before and never seen him afterwards.

Mr. MARTIN.—Stand up here, Mr. Harben.

(Mr. Harben, being present in the room, stands up.)

Q. I will ask you to look at this gentleman, Mr. Newman, and see if you recognize him as the man.

A. I do not think that he is the man. That man had a mustache, a little, short mustache.

Q. You think he had a short mustache?

A. Yes, sir.

Mr. JUREY.—I desire the record to show that the gentleman who Mr. Newman has just looked at is M. B. Harben, who has testified as a witness in this case.

Q. I will ask you if you told any such a person that you had recovered, and that you were about all right?

A. Which person?

Q. Mr. Harben, or anybody.

A. Well, Mr. Harben, the man that you say talked to me about the boat?

Q. Yes, or anybody else.

A. That is a lie, sir; I never told anybody—how could I?

Q. You say you still suffer a great deal?

A. I do, sir.

Q. How tall are you, Mr. Newman?

A. About five feet eight.

Q. How heavy are you?

A. About 177 to 183 or 185. When I work very hard I generally drop down a little. If I am not at hard work I come up again to about 183 to 185. I never have been below 177 for the last fifteen or eighteen years.

Q. I will ask you, Mr. Newman, if you remember of my coming over to see you about the 26th of September last, when he asked you if you were willing to submit to a medical examination? A. Yes, sir.

Q. And told you that Mr. Metcalfe, or the appellant, desired to have a medical examination made?

A. Yes, sir.

Q. What response did you make to that request?

A. I told you that could come any time; that they could not make it any too quick for me, and for them all to come at any time, so that they would not be picking at me again like they examined me before at different times; that they should all come at one time and make an examination, and to have good doctors, doctors that are known.

Q. And that he could pick out any doctors that he wished? A. Yes, you mentioned that.

Q. Of good reputation?

A. Yes, sir; wanted good doctors that were well known.

Q. That was the only request that you made, was it not? A. Yes, sir.

Q. That he could bring as many reputable physicians as he saw fit?

A. As many as they wanted, but they could not come too quick.

Q. You were willing to submit to such an examination at any time, from that time on until the case was closed in the District Court here, were you not?

A. Yes, sir.

Q. And they could have made such an examination at any time they wanted?

A. Every day.

Q. You were right here in the house every day?

A. I always was in the house. I asked if that would push the case along quicker if the doctors would come and examine me.

Q. I will ask you, Mr. Newman, if you believe that you will ever be able to perform any manual labor?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial. The witness is not competent to answer the question.

A. No, sir. It is over a year now, and there is no sign of it.

Cross-Examination.

Q. (Mr. JUREY.) Mr. Newman, you say that you own two boats down here?

A. Yes, sir.

Q. How large a boat, did you say?

A. Forty-two feet long and draws about 4 feet, between 4 and 5 feet, when she is loaded down, ready to do work.

Q. That is the steamer?

A. Yes, sir.

Q. How large is the sailing boat?

A. About between 20 and 30 feet; I could not tell you exactly the measurement; although I have had her quite a good while, I never measured her.

Q. The boat is a pretty good sized boat?

A. She has got a nice little cabin; she is a good quick boat, and sails very nice, and you can go anywhere from here. I used to go down to Port Townsend with her very well. I have gone down there a good many times to examine work, and so forth, and then would come back again.

Q. Who did you say painted her?

A. Charley Masculin.

Q. What color did he paint her, Mr. Newman?

A. Well, now, the boy mixed the paint, between the two of them they did it; I could not tell you now; I was down there several times—what they did paint her.

Q. How many coats did they put on?

A. That I could not tell you. I told Charley to paint her up. He is a man around boats all the time; and to keep her so that the sun would not crack her up, and how many coats he painted her, I don't know.

Q. Did he paint them all over?

A. He must have.

Q. Inside and out?

A. I never have been inside; I never have been in the cabin.

Q. You have painted them, have you not?

A. I have in my time, when I was well.

Q. How long would it take a man to paint these two boats? A. That depends on how the weather is.

Q. Under ordinary circumstances?

A. That depends on the man and how the tide is.

Q. Well, under ordinary circumstances, how long would it take a man to paint these two boats?

A. I could not tell you. I have painted lots, but I never kept the time.

Q. You do not know how long it would take to paint them, under ordinary circumstances? A. No, sir.

Q. When were they painted, Mr. Newman?

A. Some time in April.

Q. You do not know the exact day? A. No, sir.

Q. You say you were down there several times when they were painting them?

A. I went down there—it was a nice day—to see how these boats were, and I told the boy to go down and cover them over with boards, so that the sun would not crack them. The next day I went down and looked at them and I seen they needed paint, and I spoke to Charley; when he came up to see me, I told him to paint these boats for me, and I gave him the key of the shop; and the boy used to go down, and they did the work.

Q. You say you were down there while they were painting them? A. No, sir.

Q. Not while they were painting them?

A. No, sir. I went down to see them when they were painted.

Q. You were down there about the time they were painted?

A. Well, the boy came up and asked me how I liked the color about the cabin, and I told him I would go down the first fine day and see about it. So one day I went down there and looked at them.

Q. Do you remember you said you did not know Michael Kelly? A. No, sir.

Q. This is Mr. Kelly, Mr. Newman; did you ever see him.

(Mr. Kelly stands up.)

A. There was a man with nuggets from the Klondike that looked a good deal like him.

Q. Do you remember seeing him down at your boats?

A. I was sitting there—that was the day I went down to look, after my brother in law told me to go down and look at the paint at the color they had on the cabin there; and I was sitting alongside of the steamer, and I was taking a rest after I went down there, when this man came down there.

Q. What were you sitting on?

A. Sitting on the log where the big steamer is hauled out, a square timber.

Q. Do you remember that just before that gentleman called at your shop that someone hollered to you from the Oceanic Packing Company's warehouse, and you answered?

A. No, sir; I do not remember anybody hollering to me.

Q. You do not remember anybody hollering to you?

A. No, sir.

Q. Before Kelly came up to where you were?

A. No, sir; I do not remember anybody hollering to me.

Q. Did you have any conversation with that gentleman?

A. A man came down that day and asked me if I knew a man by the name of Billy Gray, and I said there was such a man around here working for the Packing Company on the "Blakeley" several seasons in here. He also wanted to know where he was, and I told him to go in

the Fish Company and he could find out all about where he is; they knew all about him. And then he asked me how the company treated me when I was hurt, and I asked him what company he meant. "Why," he says, "the 'Homer,' did they meet you half way?" And I looked at the man.

Q. What did you say to him?

A. I said to him, "What do you know about me?" Why, he said, he inquired around the waterfront in Seattle and they told him that Harry Newman was hurt and he knew Billy Gray; and that they had told him he was a fisherman on the "Blakeley." I told him he could go there and inquire about it, and find out all about him; that they could tell him. Then he asked me to come up to the saloon for a cigar and I told him that I did not smoke, and he went away.

Q. You say they call you Harry Newman for short?

A. Yes, I was once in a ship and there were so many Charles there, and the captain came up and he says, "There are too many Charleys," and he says, "What is your second name?" And I says, "Harry or Henry," and he says, "We will call you Harry and get the Charles out of the way," and that is the way that I got to be called Harry.

Q. You sometimes go by that name now, in a rough way?

A. Yes, there are men who call me by the name of Harry Newman.

Q. And you sometimes give that as your name?

A. No, sir, "C. H."

Q. But they call you Harry Newman?

A. Well, they call me Harry Newman, and if a man asked me I would explain to him.

Q. How long were you at the hospital, Mr. Newman?

A. Very close to three weeks, somewhere about that.

MR. MARTIN.—I object as incompetent, irrelevant and immaterial. It has been gone over a dozen times in the printed record.

Q. Then you came over here to your home?

A. I was fetched over here, sir, in a spring bed, with a hammock, with a stretcher. They got my bed rolled into the stretcher and they started and fetched me down stairs where the spring bed was on the wagon, and I was taken in the spring bed out here.

Q. Who were your physicians and surgeons while you were in the hospital?

A. Dr. Miller and Dr. Wotherspoon and another man whose name I cannot remember, but there were several of them up here with them.

Q. Did they attend you after you came over here?

A. Yes, sir.

Q. How long did they attend you?

A. I could not tell you that; I did not keep any account.

Q. Well, about how many visits did they make you?

A. I could not tell you; they first came pretty often, they came here several times, two or three or four of them examined me here a number of times.

Q. As many as four or five times?

A. I could not tell you, I did not put it down.

Q. How long did they keep coming to see you after you came over here?

A. They kept it up a long time.

Q. A month?

A. They were here Christmas time, just a little before Christmas time.

Q. Dr. Miller? A. Dr. Miller.

Q. How long since he saw you last, Mr. Newman?

A. I told you before Christmas, a little while before.

Q. That was the last time that he came to see you?

A. Yes, sir.

Q. Well, has any other doctor been attending to you since that time?

A. Dr. Miller and Dr. Wotherspoon.

Q. Any other doctor since that time?

A. Dr. Miller is attending to me right now.

Q. He has not been over here since Christmas, I understood you to say? A. Yes, sir.

Q. Well, there is no other doctor than Dr. Miller and Dr. Wotherspoon?

A. I send word to him once a week or so, and he gives me medicine.

Q. Is there any other doctor or surgeon attending to you except Dr. Miller and Dr. Wotherspoon?

A. Dr. Wotherspoon and Dr. Miller.

Q. Is there any other doctor?

A. No, not steady, but there was a number of them here examining me and attending me.

Q. Since Christmas, has any other doctor, other than Dr. Miller and Dr. Wotherspoon?

A. No other doctors than Dr. Miller and Dr. Wotherspoon.

Q. They are the only ones?

A. Yes, sir, they are the only ones.

Q. When were you first able to sit up, Mr. Newman, after you came home after you were hurt?

A. Oh, I was propped up on my pillows before Christmas.

Q. Before Christmas? A. Yes, sir.

Q. You were not able to be propped up at first?

A. No, I had to lie quite straight; it was about Christmas time I was propped up.

Q. And able to sit up in bed that way?

A. No, I never could sit in bed. I had to lay straight and be propped up with pillows right along under me.

Q. When were you first able to get out of bed?

A. About January.

Q. Do you remember what time in January?

A. No, sir, I do not; about the first of January, the beginning of January.

Q. You were able to get out about that time and get your clothes on?

A. I would sit on a chair for a little while, and then I would be rolled in bed again, and then, after a while, I got so that I could get up between two chairs on my feet.

Q. That was along the first of January?

A. Yes, after a little while, after I sat up in bed a little while.

Q. When were you first able to walk around a little, with the aid of crutches or a cane?

A. I used to use two canes, and stand up between two chairs around the house; I could not tell you the date; I never marked it down.

Q. Was that about the first of January?

A. About the first of January I started to get out on a chair.

Q. How late in January was it before you were able to walk a little?

A. I did not walk much around in January; it was simply to get up between two chairs.

Q. When were you first able to go out of the house, Mr. Newman, after you were hurt?

A. Somewhere about April.

Q. Not until April? A. No, sir.

Q. You are quite sure of that, are you?

A. Yes, sir.

Q. And you did not get out of your house after you were hurt until April?

A. Yes, sir; but I could get around the premises here; I could walk with a cane and get around.

Q. You were not able to do that until April?

A. No, sir; not outside.

Q. Now, is it not a fact, Mr. Newman, that you were over in Seattle earlier than April? A. No, sir.

Q. You are sure of that? A. Sure of that.

Q. There is no question about your memory in that particular? A. No, I do not think it.

Q. When was the first time that you—you have been down on the beach, have you not, since you were hurt?

A. I was down on the beach about the boats, to look over them and see how they were, and I told Charley and Charley came up here and wanted to know about the boats, and I went down and had a look at them.

Q. You walked down? A. Yes, I walked down.

Q. You had no assistance?

A. I had assistance coming up.

Q. You walked down by yourself.

A. I walked down, but it took me a long time, yes.

Q. This is quite a steep hill, is it not?

A. No, sir, it is not so steep; you can find the grade level; it cannot be steep when old ladies and old men go back and forwards.

Q. It is steady and long?

A. It is a long grade; it is not very steep but it is long.

Q. A long slant? A. Yes, quite a slant.

Q. Now, when was the first time that you went down the hill to the beach?

A. I could not tell you, but that is the time that I went to look at the boats.

Q. You do not know what the date was?

A. No, sir, I could not tell you the date.

Q. It is certainly some time after April?

A. In April, yes.

Q. Now, was it the early part, or the latter part of April?

A. Somewheres close to the middle of April.

Q. The first time that you were able to go down on the beach, or went down on the beach after you were hurt?

A. It was when I went down to the boats, and that was in April, and what time it was I could not tell you.

Q. The first time since you were hurt?

A. Yes, I went down there in April.

A. Yes, sir.

Q. You have been over to Seattle quite frequently lately?

A. I have been down several times, a few times.

Q. How did you go over? A. In a steamer.

Q. I mean did you have any assistance?

A. Oh, the wife assisted me. Generally we went together. I would come down to get the fresh breeze of the bay, being on the water all the time, and I was right over here and come back again on the next boat.

Q. You have gone over by yourself, have you not?

A. I went once by myself, the first time.

Q. Now, do you know when that was?

A. No, sir; it was in April.

Q. You are sure it was not before April?

A. No, sir.

Q. Do you know about how many times you have been over to Seattle since you have been hurt?

A. Two or three times.

Q. Since April?

A. That was in April, yes. I went over for a ride on the boat, to get the fresh air of the bay.

Q. Mr. Newman, did you keep your attorney, Mr. Martin, advised of your condition?

A. I do not understand you. Posted on what?

Q. Did you tell Mr. Martin when you were able to sit up?

A. I do not remember about it; I cannot remember if I ever told him or not.

Q. Don't you know whether you told him or not?

A. No, sir.

Q. Did you tell him of your improvement?

A. I told him how I got along, of course.

Q. Well, along in January, when you were able to get out of the bed and move around a little, did you tell him about that?

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial.

A. I do not think he ever asked me.

Q. Did you tell him?

A. I do not think I did; I do not remember it.

Q. Did you tell him when you were able to walk around in the yard?

A. I do not think that I did; I do not remember of it.

Q. Do you know when your case was tried before Judge Hanford?

Mr. MARTIN.—I object as irrelevant and immaterial.

A. I do not remember now.

Q. Refresh your memory; do not you recall that it was some time in November?

A. I know I used to growl at Mr. Martin for not pushing the case along; I thought it was taking a long time and my money was getting scarce, and I was needing some little money, but he said that he was doing all that he could to push the matter on.

Q. When was the last time that you told him and talked to him that way?

A. When he was informing me about the case.

Q. What time was that; when was it?

A. That I could not tell you; I know I told him, but what time I could not tell you.

Q. Did you talk to him that way after the first of February?

A. That I could not tell you; I know that I talked to him and told him that the cash was getting short and to push the case along; and he said that he was doing the best that he could.

Q. Do you not recollect that your case was tried before Judge Hanford some time in February?

A. I could not tell you now.

Q. Your attorney told you when the judgment was entered, did he not? A. Yes, sir.

Q. What time was that?

A. I could not tell you when it was.

Mr. MARTIN.—I object because the record will show that. |

A. I could not tell you.

Q. Do you not recollect it was some time in February?

A. I could not tell you, sir.

Q. Your memory is not very good?

A. Well, my memory has been pretty good. Sometimes the pains strike up my neck and hardens the joint and my head aches for four or five or six days at a time, and I get kind of stupid for that time.

Q. Now, Mr. Newman, by Christmas, last year you had improved quite considerable? |

A. Why, yes, I had improved; of course I improved or I would not be where I am to-day, if I was not improving then.

Q. Then, during January, when you were able to get up and walk around a little you had improved considerably?

A. I did not walk around in January; I was sitting in a chair, sir, and holding up between two chairs.

Q. At that time you had improved considerably?

A. A little at a time, a little at a time.

Q. That was considerable improvement over the time that you were lying on the flat of your back?

A. That I could not tell you, how much it was; but I was improving.

Q. Don't you feel as if you had made considerable improvement, when you were able to get up and stand that way?

A. Well, if I would not be improved I could not be up sitting on a chair from lying flat on my back. I did the best that I could. The doctor told me to move all I could, and he says, "That is the only way that you will get around," he says. He says, "Never mind the pain, you have to suffer the pain, but get around."

Q. You are able to walk around now, are you not, very well?

A. Well, with a cane and assistance I can take my time, and with my two canes I can get along slowly with pain.

Q. You have walked up and down the hill?

A. I have walked down, and then I have walked up with assistance.

Q. What kind of assistance?

A. A man take me by the arm and walk along.

Q. Every time you walk up?

A. Yes, every time that I walk up.

Q. You are sure of that? A. Yes, sir.

Q. But you have walked down without assistance?

A. Yes, sir, I walked down once without assistance, but took my time.

Q. You have gone over to Seattle and you had no assistance?

A. What do you mean by going to Seattle?

Q. The times that you have gone to Seattle you have had no assistance?

A. I had assistance coming back.

Q. On the ferry?

A. How do you mean on the ferry?

Q. Did you get off the ferry at Seattle?

A. Why, yes, of course I got off the ferry and came home.

Q. In Seattle, on the other side?

A. Yes, I got off, as far as to sit down on the ferry dock wharf until the ferry came back, and I boarded the ferry again.

Q. You had no assistance doing that?

A. My wife came with me.

Q. Did she assist you?

A. Well, she assisted me up, she took me by the arm.

Q. Every time that you have crossed that way?

A. I have only crossed a few times.

Q. Did your wife go with you every time?

A. She went up town and I came back.

Q. By yourself?

A. Yes, coming up the hill I have met people down there that came on the boat with me, and they assisted me up the hill.

Q. But you have come back on the ferry and on up the hill here?

A. I had men assist me.

Q. I say up the hill?

A. We ride to the foot of the hill on the ferry. }

Q. I say from Seattle back to the foot of the hill?

A. The hill starts right at the foot of the ferry, sir.

Q. But you have come from Seattle to the foot of the hill?

A. I stayed on board of the ferry.

Q. You had no one to assist you?

A. No, I did not have anybody to assist me to sit on the seat.

Q. Did you have anybody assisting you to get on or off the ferry?

A. Yes, sir.

Q. Who?

A. My wife assisted me, and several men have. I think Mr. Stevens assisted me, and Mr. Cooper assisted me coming up the hill.

Q. I mean getting on and off the ferry; you have gotten off the ferry yourself without assistance?

A. My wife assisted me coming off this way. The men who assisted me coming up the hill assisted me—the hill starts right at the ferry.

Q. Mr. Newman, you have gotten on and off the ferry without assistance, have you not?

A. What do you call assistance?

Q. Without anybody holding to you?

A. Yes, they had hold of me.

Q. Did they have hold of you?

A. Had me by the arm.

Q. In helping you on and off the ferry?

A. How do you mean helping?

Q. Have you not gotten on and off the ferry without anybody take hold of you?

A. The ferry is right at the foot of the hill.

Q. I understand that perfectly well.

A. There are seats on board of the ferry.

Q. I am not speaking about the hill. Have you not gotten on and off the ferry boat without anybody assisting you or helping you?

A. There were several that were willing to assist me, but Mr. Cooper came up once on the hill with me, and Mr. Stevens came up the hill and they took me by the arm on one side, and I had a cane on the other.

Q. That was to help you up the hill?

A. Yes, sir.

Q. I mean getting on and off the ferry, in getting on and off of the ferry boat did you have any assistance or help from anyone? A. Yes, sir.

Q. Did you ever get on and off the ferry boat without assistance or help from someone? :

A. I have only been three times over, and I have been assisted every time that I came up the hill.

Q. Did they assist you every time in getting on and off the ferry, in walking down the gangway to the ferry boat, did anyone help you or assist you?

A. There are only a few steps to make.

Q. Did you do that yourself?

A. I guess I must have, to sit down I did not need to be assisted. I could catch hold of the seat and hold myself down.

Q. Mr. Newman, you say you remember the time the gentleman came here and talked to you about buying the boat? A. Yes, sir.

Q. You remember the time distinctly?

A. Not the time, I do not. I remember there was a man here, but I do not remember the time.

Q. Had not you been to Seattle the day before?

A. No, sir.

Q. You had not? A. No, sir.

Q. Now, is it not a fact that you were over in Seattle on the 24th of April, the day before he was here?

A. No, sir.

Q. Did not you go over to buy paint?

A. No, sir.

Q. Have you ever been over there to buy paint since you were hurt? | A. No, sir.

Q. You have not bought any paint since you were hurt? A. No, sir.

Q. Have you brought any paint home since you were hurt, from over there? A. No, sir.

Q. To refresh your memory, did not your wife tell you that Mr. Harben, the man that talked to you about the boat, and Ed Hanson were here the day before they saw you? A. Yes, sir.

Q. Where were you that day?

A. Right on the premises here, right around the bend here. The doctor told me whenever it was fine that I must get out, that that was the only way that I could get along.

Q. You were not at Seattle that day?

A. No, sir, I just happened to come right home after they were gone and my wife said they were here about the boat.

Q. Were you not down on the beach the day before you saw that man that was talking to you about buying the boat? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. If Mr. Hansen says he saw you on the beach, the man who talked to you about the boat, it is a mistake?

A. It is a lie; it is just like the man who said that I worked on the grade, it might have been the same Newman that he seen working on the grade that he seen.

Q. Do not you recollect meeting a gentleman down on the beach near the bath-house about the 14th of May?

A. I was never down there.

Q. You never were down there?

A. No, sir, not since I was hurt.

Q. Not as far around as the bath-house?

A. No, sir, not that far since I have been hurt.

Q. And you were walking along with a cane?

A. Yes, I walk along with a cane.

Q. Do you not recollect that you were there near the bath-house about the 14th of May? A. No, sir.

Q. You same that Sam Coombs that testified in this case, is known as Crazy Coombs?

A. Well, that is what they have nicknamed him, they call him Crazy Coombs.

Q. He is justice of the peace over here, of this precinct? A. Yes, I believe he is.

Q. When was he elected, Mr. Newman?

A. I could not tell you.

Q. He was elected last election, was he not?

A. He might have been.

Q. Do you know how long he has been justice of the peace? A. No, sir.

Q. You say that his statement that he saw you walking up and down the hill here is not true?

A. That is a lie.

Q. You do not believe that he can tell the truth?

A. No, I do not. I can get men to swear that he cannot tell the truth.

Q. And now you say that he talked to you about settling your case, Judge Coombs did?

A. Yes, sir.

Q. Told you that General Metcalfe had sent him, or authorized him?

A. Yes, he said that he was authorized from General Metcalfe.

Q. You did not believe what he said, did you?

A. Well, I did not know what to make of him, I told him to go and see my attorney.

Q. You did not believe it, did you?

A. Well, I kind of believed it.

Q. You say that you know he is a liar?

A. I told him to go to my attorney.

Q. But did you believe Coombs when he told you that?

A. I looked at him and then I told him to go to my attorney, I did not know anything about the lawsuit.

Q. Did you believe that he was telling you the truth when he told you that?

A. Well, I did not know what to think about it at the time.

Q. But you believe now that he was telling you the truth? A. Now?

Q. Yes. A. Well, I kind of think so.

Q. You kind of think that he did?

A. Yes, sir.

Q. That he would tell the truth about one thing and tell a story about another, that is the way that you think that he would do?

A. Well, if there was a dollar in it for him he would do anything. You can ask any man on the hill and they will tell you the same thing; that is all I know of him; I do not know him personally, only when he came up and talked to me; but they all say if there is a dollar in it for Sam Coombs he is right there

Q. But they all elected him justice of the peace just the same?

A. They do that many times in a small, little place like this.

Q. He is an old resident here?

A. I do not know how long.

Q. He has been living here ever since you have been here?

A. Yes, I guess so. That don't make any difference.

Q. Mr. Newman, you speak of wearing a steel jacket?

A. Yes, sir.

Q. It is simply a kind of corset, is it not?

A. It is filled with steel.

Q. How many ribs has it got?

A. I could not tell you.

Q. It has not very many?

A. It is all around, so many in front, and so many at the back and so many at the sides; they are all close together.

Q. They are just ribs like a corset?

A. Well, I never looked inside to see how they are.

Q. They appear to be, don't they?

A. They might be that way, but it is full of steel.

Q. Who told you to wear it? A. Dr. Miller.

Q. Mr. Newman, you testified as to your conversation about a surgical examination. Did you ever tell any of the attorneys on the other side that you were willing to have a surgical examination made?

A. What do you mean by attorneys on the other side?

Q. Did you ever tell General Metcalfe or myself?

A. I told Mr. Martin.

Q. You never told General Metcalfe?

A. When he was here—he came here and asked me and I told him that I was willing for them to make it, but to have it made quick; told them to have it made at any time, but I did not want them breaking and twisting around like they did when they examined me before.

Q. You never told anybody except Mr. Martin?

A. If they had come over I would have told them.

Q. You never told anybody but Mr. Martin?

A. I told the doctor, too.

Q. Doctor who? A. Dr. Miller.

Q. That is all that you told?

A. Yes, as far as I can remember.

Q. Did you know that they were applying to the court in November for a surgical examination, for the court to direct a surgical examination?

A. The only way that I knew it Mr. Martin came over to me.

Q. He told you that they were applying for it?

A. Yes, sir.

Q. What did you tell him then to do?

A. Told him to have them come on any time they

A. Told him to leave them come on any time they wanted it.

Q. Did you know that your attorney objected in court to the granting of the motion by the court?

Mr. MARTIN.—I object. The attorney did not object. I wish to state right here that I got up before Judge Hanford and asked him to name any number of reputable physicians to come and make a medical examination. That was about the 23d of November, or thereabouts, some six or seven days after the time at which the court had ordered the testimony closed and after the testimony had been filed. And after I had requested Mr. Metcalfe and yourself to make a medical examination before the time was up for taking testimony. Mr. Metcalfe deliberately waited until the time had expired for the taking of testimony, and I only objected to the physicians he named. I told Judge Hanford to name physicians, and he objected and refused to permit Judge Hanford to name the physicians.

Mr. JUREY.—I move to strike the statement of counsel for the reason that it contradicts the record in the case and his own affidavit.

Q. Did Mr. Martin tell you in November that we were applying to the court for an examination.

A. He told me, but I do not remember what time it was; I could not say.

Q. Was it before or after we had applied?

A. When he came and told me?

Q. Yes. A. It was before.

Q. You told him that you were willing.

A. Well, yes, any time they came to come altogether,

as long as it would help the case, to help the case to get through with.

Q. You stated, Mr. Newman, in your direct examination that you will never be able to work again?

A. No, sir.

Q. How do you know that?

A. Who knows better than I do. I am suffering pain; I am suffering every move.

Q. You have improved considerably, have you not, since the time that you were hurt?

A. Why, if I would not be improved I would not be around the way I am to-day.

Q. If you keep on improving you will get well after a while?

A. No, sir, never, the way I feel in that spot.

Q. When you were first hurt you did not feel like you would ever get this far along, did you?

A. I thought I would die in a very short time. When a man is after a year and a half so that he cannot lie on his left side at all, and has to lie on his right side altogether, and he cannot bend his back and has to keep in a straight position, I guess a man can tell whether he will ever be able to work or not.

Q. Mr. Newman, you say you had a talk with Mr. Coombs about settling your case, or he had a talk with you?

Mr. MARTIN.—I object as not proper cross-examination. It has been gone over once or twice.

Q. When and where did he ever have any talk with you?

Mr. MARTIN.—I object. He stated he had them right down at the bend a couple of times, I believe.

Mr. JUREY.—I object to counsel interrupting and giving the witness pointers as to how he should testify.

A. Down by the bend, sir; right on the top of the hill here.

Q. When was that, Mr. Newman? A. In April.

Q. In April? A. Yes, sir.

Q. Was anybody present except you and he?

A. When he came up to me where I was resting, I was sitting down there—as you go down by there you can see the square timber that I was sitting on, and it seems as if he had been watching me; and no sooner had I sat down then he was by me.

Q. That was in April? A. Yes, sir.

Q. You say you had another talk with him afterwards? A. Yes, sir, a few days afterwards.

Q. How long did he talk with you the first time?

A. I could not tell you that.

Q. Five or ten minutes?

A. I did not time it, sir; you can tell by the conversation about how long it would take.

Q. Five or ten minutes?

A. I could not tell you, sir.

Q. You saw him again, you say, two or three days afterwards?

A. Yes, sir, about three days afterwards I took a walk the same way, and I sat down there and he bobbed up again.

Q. In the same place?

A. In the same place on the log.

Q. Now, Mr. Newman, is it not a fact that you have not seen Judge Coombs for three or four months, five or six months?

A. Well, you know where April is, and you can figure it out, he spoke to me twice.

Q. Is it not a fact that Mr. Coombs called at your house to see you?

A. He spoke to the wife, yes.

Q. And your wife came to the door and you were not at home?

A. I was out to the bend, sir.

Q. But you were not in the house at the time that he called here?

A. No, sir.

Q. Now, do you remember the day that he had the talk with you?

A. No, sir, I could not tell you the day. I do not remember anything about that.

Q. Was it the early part or the latter part of April?

A. Somewheres about the middle part of April.

(Testimony of witness closed.)

At this time futher proceedings were adjourned, to be taken up by agreement.

Seattle, June 30, 1900.

Continuation of proceedings pursuant to adjournment.

Present: John S. Jurey, Esq., of proctors for appellants; William Martin, Esq., of proctors for appellee.

Mr. JUREY.—I desire to give notice to counsel in open court that at 2 o'clock P. M. this day, at this place, on behalf of the appellants, I will offer rebuttal testimony, provided the proctor for appellee does not desire to take testimony himself at that time. If he does we

will in no manner interfere, but will take our rebuttal testimony after he closes at that time. I now offer in evidence a written notice to the same effect as the notice I have given, served on counsel on the other side with his admission of service, and ask that it be marked as one of the appellant's exhibits in the case.

Mr. MARTIN.—The appellee objects to any testimony being taken by appellant to-day as rebuttal testimony, or any other kind of testimony. This case was referred to give him an opportunity to meet some allegations in certain affidavits that have been made, and they were given until the 15th day of June to do so, then appellee was given until the 12th day of July in which to put in any rebuttal testimony. I also state that I have several witnesses that will be here at two o'clock to testify in his case.

Mr. JUREY.—Do I understand counsel to say that he will consent to the taking of my testimony on Monday?

Mr. MARTIN.—No, sir, I will not consent that it be taken to-day or any other time.

(Document received in evidence and marked Appellee's Exhibit "H," filed and returned herewith.)

Mrs. MARY NEWMAN, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) What is your name?

A. Mary Newman.

Q. Are you the wife of the appellee in this case?

A. Yes, sir.

Q. Have you seen Mr. Newman and been with him since he has been taken over to your home at West Seattle, after he was injured? A. Yes, sir.

Q. Have you seen him every day?

A. Yes, sir, every day.

Q. Did you see him every day between the 12th and the 19th of March, 1900?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. Was he at home at that time?

A. Yes, sir, around the door at home.

Q. About how many times would you see him per day?

A. Well, I was there right at home, unless I happened to come across to town, and then I would be gone all day.

Q. You would only be gone part of the day even if you came to town?

A. Yes, sir.

Q. You would be within speaking distance of him and in sight of him all the time, would you not?

Mr. JUREY.—I object as leading.

Q. Now, a man by the name of Murphy has testified that Mr. Newman worked on the grade over there on the 13th, 14th, 15th, 17th, 18th, and 19th of March, 1900.

A. He never did a day's work; the man is not able to work.

Q. He has not been?

A. He has not been since he was hurt.

Q. Has not done any work since he has been hurt?

Mr. JUREY.—I object as leading.

A. No, sir.

Q. Is he able to do any kind of work?

A. Nothing at all.

Q. And the same man Murphy testified that he was

working between the 4th and the 9th of April on the grade, wheeling and grubbing.

A. He never did.

Q. He was at home?

A. He never left the house and never went out for exercise until between nine and ten, that was the earliest he ever went out.

Q. Of the house? A. Yes, sir.

Q. You have helped take care of Mr. Newman, have you not? A. Yes, sir, I have.

Q. And know of his present condition?

A. Yes, sir, I do; and he suffers pain every day.

Mr. JUREY.—I move to strike out the answer of the witness as not responsive to the question.

Q. Does he complain much?

A. Yes, he does; he complains of his back and left side especially, he cannot lie on it at night.

Q. How frequently has he been making these complaints? A. Ever since he has been hurt.

Q. Is he in a crippled condition at the present time?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and leading, the witness has not been shown competent to answer such questions.

A. Yes, sir.

Q. State whether or not he has improved any to amount to anything in this last couple of months.

Mr. JUREY.—I renew my last objection.

A. He is improving very slowly.

Q. State whether or not he is able to bend his back

Mr. JUREY.—I object as leading.

A. No, sir, he has got to keep in a straight position all the time.

Q. Have you seen him every day?

A. Yes, sir, every day.

Q. Did you see him every day between the 12th and the 19th of March, 1900?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. Was he at home at that time?

A. Yes, sir, around the door at home.

Q. About how many times would you see him per day?

A. Well, I was there right at home, unless I happened to come across to town, and then I would be gone all day.

Q. You would only be gone part of the day even if you came to town? A. Yes, sir.

Q. You would be within speaking distance of him and in sight of him all the time, would you not?

Mr. JUREY.—I object as leading.

Q. Now, a man by the name of Murphy has testified that Mr. Newman worked on the grade over there on the 13th, 14th, 15th, 17th, 18th, and 19th of March, 1900.

A. He never did a day's work; the man is not able to work.

Q. He has not been?

A. He has not been since he was hurt.

Q. Has not done any work since he has been hurt?

Mr. JUREY.—I object as leading.

A. No, sir.

Q. Is he able to do any kind of work?

A. Nothing at all.

Q. And the same man Murphy testified that he was

working between the 4th and the 9th of April on the grade, wheeling and grubbing.

A. He never did.

Q. He was at home?

A. He never left the house and never went out for exercise until between nine and ten, that was the earliest he ever went out.

Q. Of the house? A. Yes, sir.

Q. You have helped take care of Mr. Newman, have you not? A. Yes, sir, I have.

Q. And know of his present condition?

A. Yes, sir, I do; and he suffers pain every day.

Mr. JUREY.—I move to strike out the answer of the witness as not responsive to the question.

Q. Does he complain much?

A. Yes, he does; he complains of his back and left side especially, he cannot lie on it at night.

Q. How frequently has he been making these complaints? A. Ever since he has been hurt.

Q. Is he in a crippled condition at the present time?

Mr. JUREY.—I object as incompetent, irrelevant and immaterial, and leading, the witness has not been shown competent to answer such questions.

A. Yes, sir.

Q. State whether or not he has improved any to amount to anything in this last couple of months.

Mr. JUREY.—I renew my last objection.

A. He is improving very slowly.

Q. State whether or not he is able to bend his back

Mr. JUREY.—I object as leading.

A. No, sir, he has got to keep in a straight position all the time.

Q. State whether or not you have ever seen him bend his back?

A. No, sir, I never have around the house.

Q. You have seen him every day?

A. Yes, sir.

Q. And waited on him? A. Yes, sir.

Q. State whether or not he is able to turn his shoulders on his pelvis, in any way.

A. No, sir.

Mr. JUREY.—I object, the witness has not been shown to be competent to answer any such questions.

Q. A man by the name of Kelly testified that he called at your house about the 23d of April and you told him that Mr. Newman was down at the workshop working?

A. I never told him that; that is a story, I never told him that. I told him that he had gone out for his walk and he would like to get down to the water, and he does. He sits there on the wharf and potters around. I did not tell him that he was working, for it is impossible.

Cross-Examination.

Q. (Mr. JUREY.) Do you remember the time that Mr. Kelly called at your house? A. Yes, sir.

Q. What was said by Kelly at this time?

A. He asked if this was Mr. Newman's house and I told him yes. He asked if he could see him, and I told him he had just gone out for his walk, for his exercise; that he had went down to the warehouse, to the wharf.

Q. That is what you told Kelly? A. Yes, sir.

Q. Did you tell him where Mr. Newman was?

A. Yes, sir.

Q. That he was down at the boat-house?

A. I told him that he would find him down there near the warehouse, sitting on the wharf there, somewhere.

Q. Had you been down to the wharf that morning?

A. No, sir, I had not been down there that day.

Q. You had not been down that day?

A. No, sir.

Q. Did not you tell Kelly that you had just been carrying Mr. Newman his lunch?

A. No, sir, I did not.

Q. You are quite sure of that?

A. I am sure I did not.

Q. When Kelly states that you did, then Kelly states something that you say is not true?

A. Well, I did not tell him that.

Q. What did Kelly ask you about Newman?

A. He asked me had he been hurt; that he heard he had been hurt on the "Blakeley," and I told him yes; and he asked me how he was and I told him that he was getting along very slowly.

Q. Did Kelly ask you if Newman walked with a cane or crutch? A. He did. I told him that he did.

Q. Walked with a crutch?

A. I told him he walked with a cane.

Q. Did he ask you how he walked, whether straight or slowly?

A. Yes; then, I thought that he was asking such questions so that he would know him. In the first place he said that he would like to find out a man by the name of Billy Gray, that he was told that he would know him

I told him that Newman was sitting down around there somewheres, and for him to go to the warehouse and they would tell him if he did not see him sitting right there that they would point him out to him. So that he would know him.

Q. You say when he goes down to the wharf that he sits on the logs around there?

A. Yes, sir. He was told by the doctor to go out as much as he can; that is the only thing that would fetch him round.

Q. When did the doctor tell him that?

A. He told him that as soon as he got moved, as soon as he could be up at all he told him to be out whenever it was fine, whenever the air was so that he could get out.

Q. And about what time was that, Mrs. Newman?

A. That was the last time that he called at the house somewheres close to Christmas, and then I come over every week, or sometimes twice a week, to tell him how he is and get medicine for him, whatever the doctor prescribes for him.

Q. Was that Dr. Miller that you refer to?

A. Yes, sir.

Q. You say that he is able to be up and around in the house?

A. Well, of course he is now around the house, and takes his walk out every now and then.

Q. When was the first time that Mr. Newman was able to sit up in bed after he was hurt?

A. The first time?

Q. Yes.

A. Well, he never sat up in bed, he was propped up with pillows.

Q. When?

A. Along in the first part of January; I don't know but it was along in the latter part of December, somewhere along there.

Q. Was he able to sit up before the last time the doctor called on him?

A. No, he was not. I think he was just starting at that time to be raised up a little, little by little, and to be put on pillows.

Q. The doctor told him that he must get out all he could?

A. Yes, sir.

Q. Had he been up at that time at all, out of bed?

A. At what time?

Q. When the doctor told him this?

A. No, sir; he told him to try and move as much as he could not to hurt himself.

Q. How did it happen that the doctor told him that he must get out as much as he could if he had not been out of bed?

A. He did not tell him that—well, he told him to move.

Q. He did not tell him to go out of doors?

A. Yes, whenever he got so that he could.

Q. At that time?

A. He told him he should be out whenever he could, so that he could be out as much as he could.

Q. But at that time he had not been able even to sit up in bed?

A. Well, I say I had pillows under him.

Q. You say about that time he had been able to sit up in bed?

Mr. MARTIN.—She did not say anything of that kind.

Mr. JUREY.—I object to counsel prompting the witness.

Mr. MARTIN.—I am not prompting the witness; the question has been answered two or three times.

Q. Had he been able to sit up in bed before Christmas?

A. No, sir, he had not been able to sit up in bed before Christmas. No more than just to rise up, as I said, and put a pillow under him; he never sat up in bed like a person would sit up in bed.

Q. Had he been able to get out of bed before Christmas? A. No, sir.

Q. Yet you say the doctor told him he must get out of doors as much as he could?

A. Yes, sir, when he got so that he could that he would be able; when he felt that he could get up and could stand it.

Q. Now, when was the first time, Mrs. Newman, after Mr. Newman was hurt that he was able to get out of bed?

A. He never got out of bed until January; somewhere along in January, the first part of January, and then he did not stay up long at a time, because he could not stand it long.

Q. Was he able to walk around the house?

A. No, sir, not when he first got up. He stood between two chairs and would stand that way for a few

minutes, and then, gradually, he could get along—after a while he got so that he could get along with two canes.

Q. When was he first able to walk with two canes?

A. The first time—well, I don't know just the first time, I did not put these things down, I did not know that I would have occasion for them.

Q. About how early in January?

A. Somewheres along the middle or last part, I do not just know, but it was some time, anyhow.

Q. Some time in January? A. Yes, sir.

Q. Now, when was he first able to get out of doors, Mrs. Newman, after he was hurt?

A. Well, he was not out of doors—he might have been right around the door, but not away from the door—the latter part of January, just standing at the door, or around the door.

Q. And he was able to get out of doors in the latter part of January? A. Yes, for a few minutes.

Q. He goes out frequently now, does he not?

A. He goes out whenever he feels that he can and the weather is nice.

Q. He goes down to the wharf?

A. He has not been down to the wharf very often.

Q. He has been down there?

A. When he had his boats painted he went down there a few times to look after them. He is a great man to be around anyhow, he will be around if he can be at all. He thought he would like to see how they were getting along with it and how it was done.

Q. When was the first time that he was able to go down to the wharf after he was hurt?

A. I do not remember when the first time was that he was down there.

Q. Was it in January? A. It was not.

Q. Was it in February?

A. No, I do not remember him being down there in February.

Q. You do not remember of him going down to the wharf in February? A. No, sir.

Q. Do you think it was in March?

A. I do not know, it might have been the latter part of March, but I could not be positive about it.

Q. Do I understand you that he did not go down to the wharf until the latter part of March?

A. Somewheres along there; I am not positive; I did not keep account of these things.

Q. He has been over to Seattle frequently, has he not, since he was hurt?

A. Well, I have been over with him twice myself.

Q. Has he been over any other time?

A. I do not know.

Q. You do not know? A. No, sir.

Q. Do you remember the day that Mr. Harben, this gentleman sitting here, was at your house in April?

A. Mr. Harben?

Q. And Mr. Hansen, Ed Hansen and Mr. Harben?

A. Well, I remember.

Q. Was Mr. Newman in Seattle that day?

A. No, sir; I told them he had been out for his walk.

Q. You did not tell Mr. Harben that he was in Seattle?

A. No, sir; I did not.

Q. Had he been to Seattle recently at that time

A. What do you mean by recently?

Q. How long before that had been in Seattle?

A. I could not say.

Q. The last three or four days before that had he been in Seattle?

A. I could not say. I did not keep account of things. I had trouble enough without having to pay attention to things like that.

Q. Did he go to Seattle within the next day or two after that? A. I do not know.

Q. Your memory is not very good about these things, is it?

A. I did not keep account of things like that; I did not know that I would have any occasion to.

Q. Now, why are you so positive that he was not in Seattle the day that Mr. Harben was there?

A. Because I know that he was not. I know after Mr. Harben left he came in about a half or three quarters of an hour afterwards, and he asked me why I did not call him, that he might have heard, that he would like to sell the boat; and then I told him that they said they would be back the next day.

Q. What time was Harben there that day?

A. What time of day?

Q. Yes.

A. That I could not say, it was somewhere in the afternoon.

Q. In the forenoon or afternoon?

A. In the afternoon, I believe.

Q. Are you sure of that? A. Yes, sir.

Q. In the afternoon? A. Yes, sir.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial, and not proper cross-examination.

Q. How late?

A. Somewheres in the afternoon, I could not say what time.

Q. Is it not a fact, Mrs. Newman, that Mr. Newman did not get back to the house at that time until five o'clock?

A. No, sir.

Q. You are quite positive about that? A. Yes, sir.

Q. You could not be mistaken about that?

A. No, sir.

Q. When was the first time that Mr. Newman came over to Seattle after he was hurt?

A. I could not say, I did not keep account of any of these things and I cannot say.

Q. Well, was it in January? A. No, sir.

Q. Was it in February?

A. I do not know what time it was.

Q. You would not be sure whether he came over there in February or ont?

A. No, he never came that far I know very well.

Q. Then, you say he did not come over to Seattle in February? A. No, sir.

Q. Did he come in March?

A. Not to my knowledge.

Q. I believe you testified that Mr. Newman was improving slowly?

A. Well, of course he is very gradually. Mr. Newman is having a long tedious spell of it.

Q. He had improved some before Christmas, had he not?

A. A little, of course, some—

Q. Since before Christmas, you say? A. Yes.

Q. And he continued to improve along up to the present time, has he not?

A. Yes, very slowly.

Redirect Examination.

Q. (Mr. MARTIN.) You were at home when this man Murphy at one time came over there?

A. Yes, sir.

Q. To see Mr. Newman?

A. Yes. He came to the door and he asked if he could see Mr. Newman; and I asked Mr. Newman if he wished to see him—he had been bothered so much that he was getting tired of it—and he said, “Yes, let him come in.” And he said they were after him and they were bothering the life out of him, and he said that they even—

Mr. JUREY.—I object as hearsay.

A. (Continuing.) That they were going to swear papers out and keep him from going to Alaska, and he said he thought he would come up here and see if you were the man or not, and he said, “You are not the man; I never saw you.”

Mr. JUREY.—I move to strike the answer as hearsay, and as incompetent, irrelevant and immaterial.

Q. Mr. Murphy stated there at that time that Newman was not the man? A. Yes, sir.

Mr. JUREY.—I object as leading. I move to strike the answer for that reason.

Q. Some time subsequent to that he come in here and swore that he was the man; you heard him swear here in this court?

A. No, sir, I was not up that time, Mr. Martin.

Q. Did you come over here after the second time Murphy had gone over there to see Mr. Newman?

A. That time that you had him up here and Mr. Jenkins?

Q. Yes.

A. No, I did not come over. The rest of the ladies did. I heard them speak about it.

Q. So you are positive that he stated the first time that he came to see Mr. Newman that he was not the man that worked on the grade?

Mr. JUREY.—I object as incompetent, irrelevant, and immaterial and hearsay.

A. He went up there and stood by Newman, and I was by the dining-room door; and he said the same thing over again.

Mr. JUREY.—I move to strike the answer for the reasons last stated.

Q. (Mr. JUREY.) What else did Mr. Murphy say at that time? A. That was all that he said.

Q. Did he have any conversation?

A. No, sir, not at all; he said that there were three gentlemen had seen him yesterday, and he said, "They are bothering the life out of me, so I made up my mind that I would come up and see you and see whether you are the man or not."

Q. Did you or Mr. Newman have any conversation with him; did you make any statement to him?

A. No, sir, not a word. Only he just came in and he saw him, and those are the words that he spoke.

Q. When he spoke these words, that Newman was not the man, what did you say?

A. Mr. Newman did not say anything. Only he said, "I wish I was able to work for you," and that is all that he said. That is all that passed.

Q. Did you say anything? A. Not a word.

(Testimony of witness closed.)

At this time further proceedings were adjourned until two o'clock P. M.

Afternoon Session,

Continuation of proceedings pursuant to adjournment at 2 o'clock.

Present as at the morning session.

Mr. E. W. ANDREWS, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (By Mr. MARTIN.) Where do you reside, Mr. Andrews? A. In Seattle.

Q. How long have you resided here?

A. Eight years.

Q. What is your business? A. Banker.

Q. What bank are you connected with?

A. Seattle National Bank.

Q. What position in the bank do you hold?

A. President.

Q. How long have you held that position?

A. Eight years in the Seattle National Bank.

Q. How long have you followed the banking business?

A. About fifteen years.

Q. During that time have you had occasion to examine signatures frequently? A. Yes, sir.

Q. And do you pay out the moneys from your bank

upon your judgment of whether a signature is the signature of the party it purports to be?

A. We do.

Q. You have had occasion to study signatures too, have you not, to a certain extent in your business, and familiarized yourself in that way? A. I have.

Q. Most every day?

A. To some extent every day.

Q. I will ask you to examine the signature on Appellant's Exhibit "B," the name of H. Newman, under the words "Received payment," and the name "H. Newman" under the words "Signature of employee" on Appellant's Exhibit "B," and I will ask you to examine the admitted signature of H. Newman on the pleadings in the original record of this case, the libel, verification of the libel, follow that signature clear through the pleadings if you desire. First examine the signature of C. H. Newman to the libel and amended libel, bond and reply in the original record in this case of Charles H. Newman vs. Steamship "Homer," No. 1468, in the District Court.

A. Yes, I have.

Q. I will ask you, Mr. Andrews, if, in your opinion, the signatures of C. H. Newman to the pleadings and the signature of "H. Newman" on Appellant's Exhibit "B" were written by the same person?

A. I believe they were not.

Q. I will ask you to examine the signature "John Newman" on Appellant's Exhibit "D," and state whether or not, in your opinion, that name was written by the same person that wrote the name Charles H. Newman in the pleadings in this case.

A. I think it was not the same person.

Cross-Examination.

Q. (By Mr. JUREY.) Mr. Andrews I will call your attention to the signature "Charles H. Newman" to libel, to amendment to amended answer, in the record, which is one of the admitted signatures of Charles H. Newman to which your attention was called, and the signature H. Newman on Appellant's Exhibit "B," and I will ask you if the capital "N" in Newman in both of these signatures is not very similar?

A. Yes, they are rather similar.

Q. I will ask you if the letter is not commenced and ended with the same curl or a similar curl?

A. Yes, it differs somewhat. Yes, they are quite similar.

Q. I will ask you if the letters in "Newman" in each of these signatures are not similar?

A. No, I think not; I think they are quite different.

Q. I call attention to the signature "Newman" on the end of exhibit "B" particularly. A. Yes.

Q. Have not they some marks of similarity?

A. Well, I really think they have not. I think this is written in a louder hand, the down stroke in that is heavier, quite marked, and all the small letters show a good deal of dissimilarity with the other signature.

Q. Dissimilar?

A. Yes. I think they are quite a good deal unlike.

Q. Do you see any marks of similarity?

A. No, I do not see anything in the smaller letters.

Q. Now, is not the letter "M" in Newman in these two signatures very similar?

A. I think not. I think this is much better than this man is capable of, I should say.

Q. I will ask you if the signature "Newman" on the end of Appellant's Exhibit "B" does not appear to be written with a poorer or heavier or blunter pen than the signature in the record that your attention is called to.

A. Well, I should think it is a finer pen; that is a fine stroke; both are written, I should say, with a sharp pen, not a stub.

Q. How would you say the signature on the exhibit is written with a blunter pen than the other?

A. No, I should think they were both sharp pens, and this was written with a little more pressure.

Q. There is less attempt at shading in the signature on the exhibit than there is in the record, is there not?

A. Yes, more shading in this signature.

Q. Now, I will call your attention to the same signature on the exhibit, Appellant's Exhibit "B," on the end, and to the signature "C. H. Newman," to the verification to amendment to libel, and particularly to the letters "e-w-m" in each of these signatures, and ask you if you see any marks of similarity between the two.

A. I do not think they are very similar. Of course the differences are very slight, and yet they seem to be uniform; I think the "w" is quite different and the "e" is different.

Q. Is not the "m," the general characteristics of the "m," in each somewhat similar, particularly the beginning of the "m"?

A. I think they are not.

Q. Do you see any marks of similarity between the two?

A. No, I do not see anything that is very marked. I see similarity in the capitals, but I do not in the small letters.

Q. Now, compare that same signature in the record with the signature "H. Newman" after the words "Received payment," on exhibit "B." I will call your attention to the last two letters of each name "an" and ask you if you do not see marks of similarity between these two.

A. I do not think there are any marks of similarity, more than any man that would write the same letters that would write comparatively little. Both were men who wrote little, and their handwriting is uncertain. That seems to be rather better handwriting, considerably better.

Q. That on the pleadings?

A. Yes, as though he was more familiar with the use of a pen.

Q. Now, Mr. Andrews, I will ask you to look at all of the signatures in the record again, without reference to the exhibits, and state whether or not they do not all vary considerably from each other?

A. Yes, I admit they do.

Q. That the man who wrote the signatures in the record does not always write his name the same way?

A. No.

Q. Now, calling your attention to the two signatures on Appellant's Exhibit "B," I will ask you if you think they were written by the same man, both signatures of H. Newman on that exhibit?

A. Well, they differ quite a good deal, but I should think they were. It is my opinion they were. Of course you can see great differences in these two signatures, but

I think you will see that in every man who writes very little. You see there are differences, but there is a general resemblance. I do not think there is between these two here (showing). This man did not pay much attention to his "w." He pays very little attention to the fine lines of his "w." It shows a good deal of the general characteristics of the hand, as the weight this other man puts on his down stroke. This man holds his pen pretty evenly all through. (Referring to exhibit "B.")

Q. Both signatures on the exhibit and these in the record are very poor specimens of handwriting, are they not? A. Yes.

Q. Do you see any of the characteristics or features of an expert penman in any of these exhibits?

A. No, sir.

Q. Neither in the record nor in the exhibits?

A. No, sir.

Q. Mr. Andrews, if Mr. Newman were attempting to copy a signature, do you think that he would be apt to use the same kind of pens and ink, or would he be apt to use a different kind?

A. He would be apt to use the same thing, if he wanted to copy it, as I understand.

Q. He would be apt to place himself in the same position in every particular as the man was supposed to be in the original signature that he is supposed to be copying from. A. Yes, sir.

Q. Now, you do see a marked difference, do you not, between the shading in the signatures in the record and the one in the signature on the exhibit that I have called your attention to? A. Yes, I do.

Q. They were both evidently written by a sharp pen as distinguished from a stub pen, the signatures in the record, while the signatures on the exhibit were written with a heavier pen, but with the same ink?

A. I am not inclined to think so. I am inclined to think they are both written with a rather sharp pen, judging from the finer lines. This is possibly a little finer.

Q. The signature in the record? A. Yes, sir.

Q. Mr. Andrews, have you very much faith in expert testimony in handwriting?

A. I must say I have not; I have seen a good deal of it.

Q. Are you satisfied, Mr. Andrews, from the examination you have made of these signatures, to state positively that the signatures on the exhibits I have called your attention to were not written by the same man who wrote the signatures in the record?

A. No, I would not state that; only in my opinion they were not.

Q. Well, are you very positive in your opinion?

A. Yes, I am positive in my opinion.

Q. But still, you think you may be mistaken?

A. Yes, I admit that. There is a lack of general resemblance, and sometimes there is not a very wide difference.

(Testimony of witness closed.)

Mr. WILLIAM E. BEST, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (By Mr. MARTIN.) Where do you reside?

A. Seattle.

Q. How long have you lived here?

A. Since early in October, 1899.

Q. What business are you engaged in, Mr. Best?

A. Accountant with H. C. Henry & Co.

Q. In that business do you have charge of paying off many men, writing checks, and examining due-bills and signatures?

A. Yes, most of the checks, the time-checks that come in.

Q. About how many do you think in the usual course of business would pass through your hands in a day?

A. That is pretty hard to say. There are a great many men employed on the road; there might be anywhere from one to sixty or seventy time checks and identification checks in in a day.

Q. How long have you been in that business, Mr. Best?

A. Well, I have been in this particular office since October, when I came over.

Q. Did you have occasion, prior to that time, to make any study of signatures or examine signatures of identification?

A. I never had occasion to make a particular study of signatures, although I have had to pass on them in different places I have been, that is, I have had to do the paying of time-checks and identification checks with Chilcott & Company. I was in Alaska for nearly two years, and I have had experience in the auditor's office in Pierce county.

Q. What business is Shepard, Henry & Co. in that you are with?

A. It is not Shepard, it is H. C. Henry, the railroad contractor.

Q. And it is on your examination of these identification checks and signatures that you pay that money to the men, is it not?

A. Yes, they issue an identification check at one of the camps and the man to whom it is given signs it there, and then we have him sign and indorse the time check when he comes down. These men often lose their time checks and we have that system for that purpose, too.

Q. I will ask you to examine the signature of Charles H. Newman to the pleadings in the record in this case of Newman v. The "Homer." (Witness does so.) All the signatures that you have examined in the record here are the admitted signatures of Charles H. Newman, the appellee in this case. Now, I will ask you to examine the signature of H. Newman on the bottom and on the end of Appellant's Exhibit "B," and then state whether or not, in your opinion, the signature on that exhibit, marked Appellant's Exhibit "B," were written by the same person as the signatures in the pleadings in this case?

A. No, I should think not, that is my opinion. I would not take it for the same signature.

Q. In what respects do you find the difference between these two signatures?

A. In my opinion the signatures that I have looked at in the pleadings are written with a freer hand than those others; these are written in a much slower and cramped hand.

Q. That is on the exhibits?

A. Yes, on the exhibit. This seems to be written in a much freer hand on the pleadings. Then there is a marked difference in some, in certain letters.

Q. What ones?

A. Notably in the "w." The "w" in Newman in both of these signatures in exhibit "B," it has no loop at the top, whereas it seems to have here. The "w" in the signature is not completed and seems to have a loop at the finish of the "w," whereas the signature on this exhibit "B" the "w" is run right in the letter the next letter following. Now, another letter in Newman, the letter "a" is an entirely different "a" from this in the signature on the exhibit; it is a sort of a German "a" in this signature.

Q. You refer to the pleadings?

A. Yes, the signature in the pleadings the "a" has a separate down stroke.

Q. Now, explain that.

A. It is not connected. I can explain that by showing how the "a" is made in the pleadings, it is something of the style of the German "a," it is made with a loop and then straight down stroke, whereas in this the "a" is made with a continuous stroke; there is a break in here and the "a" seems to be made with two different strokes.

Q. That is in the pleadings there is a break in the "a," and the downward stroke all the way through?

A. I will look over them all again. (Does so.) There is that "w" again. The "w's" all seem to have that same finish with a loop. These are the two letters that to my mind show the greatest difference and dissimilarity in comparison, that and the general appearance of it I would say, would cause me to think it was not the same writing.

Q. Now, in the word "Newman" in the exhibit "B," there is no break in the "a" on the downward stroke or in the completion of the "a"? A. No, sir.

Q. But there is a break between the "n" and the "a" in the word "Newman" on the exhibit, is there not?

A. No, not between the "n" and the "a"; there is a break in the "a" itself on the signatures in the pleadings.

Q. But, now, in the signature on the exhibit there is no break in the "a" at all?

A. No, the "a" there is complete without taking the pen off.

Q. But, in the signature on the exhibit there is a break between the "m" and the "a"?

A. No, there is no break here.

Q. The "n"?

A. There is a break between the "m" and the letter "a."

Q. In which of the signatures, on the exhibit?

A. Yes, sir.

Q. Now, do you find any such break in the word "Newman" between the "a" and the "m" on the pleadings?

A. No, they are connected.

Q. But there is a decided break in the downward of the letter "a" in the word "Newman," which you say is a peculiarity of the German way of making the letter "a"?

A. In my opinion, yes. I am not a German scholar but that is my recollection of the German "a," when I did study it.

Cross-Examination.

Q. (By Mr. JUREY.) Mr. Best, how long did you say you had been with H. C. Henry?

A. Since last October.

Q. In the position of accountant?

A. Yes; general clerk.

Q. Now, how do you say these time checks were made out and the signatures of the men were taken?

A. Prior to the time the payroll is made out and sent to the office men are paid in the time checks; they make out an identification check, that simply certifies that John Doe has worked on the May payroll, that his name is on the May payroll, and down below there is a line in which they have the employee sign his name.

Q. In the presence of the time keeper?

A. Yes, or foreman, and then that signature is compared with the signature on the roll when we pay him, to see if it corresponds.

Q. And if there is any question between you and the party you would have the time keeper identify the laborer?

A. Yes, we would simply refuse payment and wait until we got the identification of the man.

Q. Then it would not be a matter of any great importance if you had a suspicion about the signature, you would stop payment and have the man identified?

A. Yes, we would stop payment.

Q. You do not depend to any degree of nicety on the identity of the signature, if you are even suspicious, you have him identified?

A. Yes, if we are very suspicious we would. We generally reply more on the signing; he may not have signed his name in exactly the same way, but if there are marks of similarity we generally go by them and we very seldom go on and refuse payment.

Q. Mr. Best, I will call your attention to the signature on the libel, amendment to amended answer, in the record, which is one of the admitted signatures. I also call your attention to the signature "H. Newman," both signatures "H. Newman" on Appellant's Exhibit "B," and ask you if there is not a marked similarity between the capital "N" in all these signatures.

A. Well, I should say there is a similarity.

Q. The capital "N"?

A. There is a similarity.

Q. The capital "N" is the one I call attention to.

A. Yes, there is a similarity.

Q. Does it appear to be made by the same movement of the pen?

A. It is made in the same way.

Q. And it is started with the same curl and ends with the same curl, or a similar curl, is it not?

A. With a similar curl, it is not the same. There is a heavier stroke on the finish.

Q. There has been less attempt at shading in the record signature than there has in the signature on the exhibit in that particular, has there not?

A. Yes, that letter is practically the same weight of stroke all the way round.

Q. Now, comparing the signature "H. Newman" on the end of Appellant's Exhibit "B" with this same signature in the record, I will ask you if you do not see a similarity between the letters "Newm."

A. No, sir, I do not. The small letters in that word I see more dissimilarity than anything else.

Q. I will ask you if the letter "m" in these two signatures does not show a similarity?

A. Yes, there are some marks of similarity in that it is the same style of "m," but there is a difference to my mind in the writing of that. That is my opinion.

Q. Now, is not the first stroke of that "m" very similar in each, to a certain extent the same deformity in each of them?

A. I do not think that "m," the first stroke of it—it looks different to me.

Q. Do not you think the greatest difference between the "m" in this word and that is that the signature of the "m" on the exhibit is not connected with the "a" in the record—it is connected with the "a," do not you think that is the difference?

A. No, I do not think that is the principal difference. It would not strike me that way. It would strike me more in the general makeup of the letter. That is a much rounder writing than this (referring to the documents.) This "m" ends in a sharp point on top, it does in both of these cases, and in the first upstroke and the first downstroke of the "m" it makes quite a sharp point; the other appears very much rounder.

Q. The other upstrokes of the "m" are not round?

A. There is one, the middle part of the "m" is round, but I speak of the "m" in general.

Q. Does not the signature on the exhibit appear to have been written with a blunter pen or a poorer pen and carried more ink than the one in the record?

A. No, I do not think so. I think they were written with practically the same kind of pen. Not a blunt one

either, neither one was written with a blunt pointed pen.

Q. Do not you think the pen that was used on the exhibit was on that was used more and carried more ink?

A. I think that it was probably an older pen, but I think that both signatures were written with practically the same kind of a pen, the same kind of a steel pen, with a sharp point.

Q. Now, I will call your attention to the signature "C. H. Newman" to verification to amendment to libel in the record, one of the admitted signatures, and I want you to compare that with the signature "H. Newman" on Appellant's Exhibit "B," and then state whether or not the marks of similarity between the letters "ewm" are very apparent?

A. No, I cannot say that there is much similarity, no more than two men who are rather poor writers make letters of the same general character. I do not think the letters are alike. I see the same difference in the "ewm" there as I noticed in other signatures, that is the "w" is finished with a loop, in that case it is not. This "m" is thinner, and this "m" is open. You will notice in the "m" in this signature the upstroke there runs and goes back through the preceding down stroke. In this case it is a separate stroke entirely.

Q. It laps the other way somewhat?

A. No, it is a separate stroke, a distinct stroke, it runs up above, the up stroke of the "m"—I do not know whether I make myself clear on that.

Q. Now, you refer to the loop of the "w" as being a very distinguishing feature. Now, I will ask you if the loop you refer to on the "w" and this signature in the record that you are examining, is not a very fine loop?

A. No, this is probably less pronounced than some other signatures throughout the record, but I think it is very plainly marked.

Q. I will ask you to look at the signature on the exhibit carefully and see if there is not an effort at a loop or a break in the line?

A. It might be intended for a loop but it is rounded off in a very poor place.

Q. It looks like there was an effort to make a loop?

A. Yes, sir.

Q. It looks as if there had been an effort to make a loop?

A. Yes, whereas the "w" throughout the different signatures in here, do not seem to be an effort to make a loop, but if there was it would be something he would not be apt to skip.

Q. Mr. Best, do you see in any of these signatures there in the record or on the exhibit, any of the features or characteristics of an expert penman?

A. No, I would not consider them so, not as an expert penman.

Q. They are both very poor specimens of handwriting?

A. I should say they were very poor specimens of handwriting. The writing on the exhibit is poorer than the other, although they are both poor writing.

Q. Mr. Best, did you ever testify in court before as an expert?

A. No, sir, I never have.

Q. Are you the paymaster of Henry & Company?

A. No, I am not the paymaster, Mr. McPhee is the

paymaster. I handle a great many checks coming. I draw all the payroll checks, draw most of the checks and he signs them.

Q. The paymaster receives the time checks and pays out the money on them?

A. Well, we divide that up between us there, who ever happens to be around at the time, we do that impartially. Mr. McPhee is the regular paymaster for the office and signs all checks, but I take the identification check and draw a bank check for it and have him sign it.

Q. Whose particular duty is it to take in the time checks and pay out the money?

A. McPhee's.

Q. McPhee's or yours?

A. Well, I think we are divided evenly on that. We divide the work up between us. McPhee is the regular paymaster for the concern and the man who goes out on the road and pays off on the regular pay day, but in regard to paying the checks that come into the office, I do probably as much of that as he does.

Q. I will call your attention to the signature of C. H. Newman to verification to amendment to libel, and particularly to the letter "a" in the name Newman, and ask you if that does not appear to have been made with one stroke of the pen?

A. No, I think not. There is a break in there; it was made with two separate strokes.

Q. You think he lifted the pen from the paper in making it?

A. He lifted the pen in making that down stroke; it is very plain with the glass.

Q. Now, are you sure of that, Mr. Best, or did he simply retrace up and down on the same line?

A. I am quite sure of that. At least, the down stroke there is a separate stroke; it started from that double place at the top; it is not even in that one, that is what I mean to say, in my opinion.

Q. You are quite positive of that?

A. Yes; I am satisfied in my own mind of it.

Q. Now, comparing the letter "a" in the signature C. H. Newman to the verification to amendment to libel in the record with the other signatures in the record, and particularly the letter "a," I will now ask you if there is not more appearance of the "a" being made with one stroke than in the other signature?

A. There is more appearance on a casual glance at it because the other "a" shows the space, and in this you have to look very closely at it to see it. That I should say looked as if it were made with one stroke much more than any of the others, because the others do not show it at all.

(Testimony of witness closed.)

Mr. S. FOSTER KELLEY, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (By Mr. MARTIN.) Where do you reside?

A. Seattle.

Q. How long have you resided in Seattle?

A. Nine years.

Q. What business are you engaged in?

A. Banking.

Q. How long have you been at that business?

A. Twelve years.

Q. During that time have you had occasion to examine the signatures on checks and paying the same?

A. Yes, sir.

Q. Daily?

A. Well, I would not say daily, but I have for a number of years.

Q. Pay out the moneys of the bank upon your judgment as to the signature on the check, did you not?

A. Yes.

Q. I will ask you to examine the signatures, Mr. Kelley, on the record in the case of Charles H. Newman v. the steamship "Homer" in the District Court of the United States, and which are the admitted signatures of Newman. First the signature to the libel, to the bond, to the reply, and I will ask you to examine also the signature of H. Newman to Appellant's Exhibit "B," and state whether or not in your opinion, Mr. Kelley, the signature of Charles H. Newman written on the pleadings was written by the same person that the signature H. Newman was written on exhibit "B."

A. In my opinion, no. I do not pretend to be an expert, of course. For the last six or seven years I have been paying teller in the Seattle National Bank, and passed on signatures every day during the six or seven years, and watched them pretty closely, of course, but I should say that these were written by different persons.

Q. I will ask you to examine Appellant's Exhibit "D" where the words "John Newman" was written by some person and ask you to state whether or not that name "John Newman" was written by the same person as the signatures "Charles H. Newman" in the pleadings?

A. I should say not, no, sir; I think they were not.

Cross-Examination.

Q. (By Mr. JUREY.) Mr. Kelley, I will call your attention to the signature "Charles H. Newman" to reply to amendment to amended answer, to the verification, one of the admitted signatures to which your attention has been called, and to the signature "H. Newman" on Appellant's Exhibit "B," and ask you if there is not a marked similarity between the capital "N" in all of these signatures?

A. I should not say there was any marked similarity between the two "N's," that is the capital "N's" you refer to?

Q. The capital "N's." Do not they begin with the same little curl and end with a similar curl?

A. Yes, they begin and end similarly.

Q. The one in the record shows there has been less attempt at shading than in any of the others?

A. I do not think there is any attempt at shading in either one.

Q. But do not you think there is a similarity between the letter "N" and these other signatures?

A. Yes, there are points in them, of course.

Q. That is the beginning and the ending?

A. Yes sir.

Q. They are very similar in each signature?

A. Yes, very, but I should not say they were made by the same party.

Q. Now, calling your attention to the letters "Newm" in the signature in the record to which your attention was specially called just now, and the letters "Newm" in the

signature on the end of exhibit "B," I will ask you to compare any marks of similarity between these combinations of letters.

A. No, sir, the "e" is different, and the "w" and the "n" are all different.

Q. You see no marks of similarity at all?

A. None whatever.

Q. I will call your attention to the signature "C. H. Newman" to verification to amendment to the libel in the record and to the letters "ewm" in the signature to the libel and to the letters "ewm" in the signature on the end of Appellant's Exhibit "B," and ask you if you see any marks of similarity between them?

A. No, sir. The "e" is different, and the "w" is different, and the "n" is also. You see the way he stops at "m" and the way he don't stop up there, and continues it up to the following letter; you see he leaves off apparently there and takes up his pen. A person most always takes up the pen some number of times in making their signature.

Q. I will ask you whether or not in many of the signatures the capitals are united, "CHN" that is, in the signatures to the verification of the libel and the amendment to the amended answer, if he does not take up his pen after writing "Charles" and makes the "H" separate, and the capital "N" separate from each other and from the small letters?

A. Yes, but I think the other signatures there he used just his initials, and a man might have a combination of initials that would not combine at all where he writes the first name.

Q. But the capital "N" in the last signature in the record to which your attention was called are separate?

A. I believe he took off his pen there.

Q. Then he made the letter "N," the capital, with one stroke of the pen, and took it off before making the smaller letter?

A. Well, I should judge he did, yes.

Q. But in the other signatures in the record he wrote the word "Newman" without taking off his pen between the capital and the small letter?

A. Yes, sir.

Q. Mr. Kelley, you and Mr. Andrew compared these together, did you not?

A. Yes, we looked at them together.

Q. You knew that Mr. Andrews thought that they were dissimilar?

A. Yes, sir.

Q. And you are the cashier of the same bank that he is president of?

A. Yes.

Q. Have you any more faith in expert testimony and in handwriting than Mr. Andrews?

Mr. MARTIN.—I object as immaterial.

A. I cannot answer that because I do not know how much faith Mr. Andrews has in it; I never heard him express an opinion on it.

Q. Have you particular faith in the reliability of expert testimony as to handwriting?

A. Well, yes.

Q. Would you be willing to say, Mr. Kelley, that these signatures in the record, could not have been written by the same man and the signatures on the exhibits?

A. Well, I give it as my opinion that they could not have been; it is my opinion they were not, and if I

was the paying teller of a bank and these two signatures were presented to pass on, I think I should refuse to pay out the money on them, if I knew that was the correct signature.

Q. Now, is it not much more difficult to compare signatures where different initials are used, for example, where you have one "C. H. Newman" and one "H. Newman," does it not make it much more difficult to compare them? A. Oh, no.

Q. Would not the similarity between the names written with the same initials, be easier to distinguish than where different initials were used?

A. I do not think so.

(Testimony of witness closed.)

Prof. W. W. De LONG, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (By Mr. MARTIN.) Where do you reside?

A. Ballard.

Q. How long have you resided there?

A. Nearly ten years.

Q. You have had considerable experience in penmanship, have you not? A. Yes, sir.

Q. Have taught penmanship for years?

A. Yes, twenty years.

Q. During that time you have had a great deal of experience in the examination of signatures?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. And have made a study of signatures and a comparison of signatures?

Mr. JUREY.—I object as leading.

A. Yes, sir.

Q. I will ask you to examine the signature of Charles H. Newman, which appears in the pleadings in the case of Charles H. Newman v. Steamship "Homer," on the libel bond, amendment to libel and reply, which are the admitted signatures of Charles H. Newman the appellee in this case. (Witness does so.) And then examine the signatures on Appellant's Exhibit "B" and "D" and state whether or not the signature of Newman upon Appellant's Exhibit "D" and Appellant's Exhibit "B" were written by the same person as the signatures that appear in the pleadings?

A. I do not believe they were.

Q. Now state, Mr. De Long, why you do not believe that they were?

A. Well, in the first place, there is a general dissimilarity; and in the second place, with very close examination I find that there is a very great difference, they show evidence of a very great difference in the person's physical and mental condition and the person that wrote the other; the holding of the pen, the knowledge he had of penmanship and the knowledge he had of the different forms of letters, etc.

Q. State particularly the difference.

A. Well, the person writing the letters on the pleadings, the words "C. H. Newman," on the pleadings, had some knowledge of the art of handwriting, and held his pen in nearly the prescribed correct position; brought the pressure to bear on the points of the pen in nearly the ordinary way, so that both points of the pen touched the

paper, and he also had some idea of a free movement. He was a man that had not practiced a great deal; he had these ideas, and his writing shows it very plainly, and he also had a very good idea of where the shades come in in good writing and puts them in about where they should come, and where a person who writes a very much better hand would put them, and shows that he had some knowledge of handwriting. While the party writing these signatures on exhibits "B" and "D" indicates very plainly to my mind that he had very little knowledge of penmanship, more than to write his name. I find on examination that he does not form his letters like those in the other instances. His style is different, he uses different forms and shapes for letters where the others are much more uniform. There is a dissimilarity between the two signatures here that you have to examine them very carefully to see that they were written by the same man.

Q. The signatures on exhibits "B" and "D"?

A. Yes, sir.

Q. Now, coming more particularly to the difference in the letters, I would like to have you state what differences you find in the letters?

A. Well, I think I have in a general way stated the differences in them. Of course letters purporting to spell the same name, would necessarily be alike; that is a "w" would in all instances in order to be a "w" would have to have all these principal points in. But as I say, the signature "C. H. Newman" in the pleadings are evidently written by a man who had a knowledge of penmanship, and wrote with a somewhat free movement, as if he had

been taught or had learned in some way that that was the way to write. It does not show that he was an expert penman by any means; he had the ideas, I think that is clearly proven from the fact that it follows right through his signatures. They show that he had a tremulous hand, especially the ones of July 28th and August 10th, 1899, they seem to have been written with a tremulous hand, as if he were suffering from some physical trouble at that time, but even then they have the same general characteristics, a free movement with the pen held in about a correct position.

Q. What position would you say the pen was held in when the words "H. Newman" was written on Appellant's Exhibit "B"?

A. Well, it was held in a very incorrect position, so that the points did not touch the paper equally; the pen to be held correctly is held at an angle of 52° ; that brings the points of the pen so that the pressure will be equal upon them, so that if there is no ink on the pen you can see the two lines made by the pen points. These lines show in the pleadings; the pen was not held at an angle of 52° but at an angle, as near as I can judge, of about 44° . In the exhibits "B" and "D" the pen was held in such a position that the points touched very unevenly, one point almost followed the other, so that they were written across the nibs of the pen rather than in a line with the nibs of the pen. This crossing of the pen you will find by an examination with a strong glass.

Q. On exhibits?

A. On exhibits "B" and "D," there being a tendency to pick up the paper that gives the signature the appear-

ance of having been written with an old stub pen, or at least a pen worn at the point, whereas by the glass you will see that it was really written with a pen of ordinary fine point held in an improper position. You see upon examination there is a tendency to pick up the paper all along there on the down strokes. More particularly is this visible in exhibit "D," but still it is visible in both.

Q. There is also a dissimilarity in the small letters?

Mr. JUREY.—I object as leading.

Q. State what dissimilarity, if any, you find in the letters?

A. Well, I have covered that by showing how the pen was held differently. I will state also that in neither one of the signatures given on exhibits "B" and "D" is the word "Newman" spelled. It is not spelled on either one in the body—it is spelled on exhibit "B" on the end, the word "Neewman"; it is not really "Newman"; there it is "Newmam," so that the word "Newman" does not really occur except in the pencil writing, which I do not take into consideration at all, never do in making an expert examination take the pencil signatures into consideration, because we have nothing to base an opinion on. Character does not run through lead pencil writing to such a degree that a person can base an intelligent opinion upon it. I find in the three signatures on exhibits "B" and "D" that the word "Newman" is not spelled at all, and the character of the letters all the way through, the small letters are altogether different, as much as could be and yet be intended for the same letter, so that you could tell whether they were intended for the same kind of a letter.

Q. I will ask you if you do not find in the name "Charles H. Newman" that there is a break in the "a" in the latter part of the completion of the "a"?

Mr. JUREY.—I object as leading.

A. I will state that in the word "Newman" on the various pleadings wherever the "a" occurs in the word "Newman" it is shaped in a very peculiar manner; that is, it is made in two parts, and I had thought in my examination that it was very much like a German "a."

Q. Do you find that anywhere in the word "Newman" on the exhibits "B" and "D"?

A. No.

Q. Do you find the letter "w" in either of the exhibits the same as you find the letter "w" in the word "Newman" on the pleadings?

A. Well, I do not know that I found the letter "w" at all in either of these, I should not call it "w." I think it might possibly be intended in exhibit "D" for a "w," but still it might be part of a letter "m"; I don't know. I think there is no "w" present in either of these signatures on exhibits "B" and "D." I do not think there is any attempt to make a "w." If you will spell down on exhibit "D," you find it comes to here (showing) and then there is an attempt to make a "u" or something there, I don't know what it is. In exhibit "B" it is very plainly "u," there is no attempt to make a "w" of it, so that I would not say that there was a "w" at all in either of these signatures on exhibits "B" and "D."

Q. Is it your opinion Mr. De Long, that the signatures "Newman" on the pleadings and the signatures "Newman" on the exhibits, were written by the same person?

A. I am of a very decided opinion that they were not, not unless he was trying to write them as much different as he possibly could, from an entirely different standpoint.

Q. They show entirely different characteristics, do they not?

Mr. JUREY.—I object as leading.

A. Yes.

Q. I will ask you if you do not find almost as much difference between the signature "Charles H. Newman" on the pleadings and the signature on the exhibits as you do ordinarily find between the handwriting of different persons? A. Yes.

Q. That you meet every day? A. Yes.

Cross-Examination.

Q. (By Mr. JUREY.) Mr. De Long, the signatures on the exhibits that you have examined are written on much softer paper, are they not, than the signatures in the record?

A. No, it is not a great deal softer; it is hard pressed paper; it is paper manufactured in very much the same manner. This is a pressed paper and so is that; there is not much difference in the paper; they are both hard surfaces.

Q. Now, with the signatures in the record and the signature on the exhibits, do they appear to be written with the same kind of a pen?

A. Well, you cannot tell, you can simply tell whether they are blunt or sharp.

Q. Blunt or sharp?

A. Both were written with an ordinarily sharp pen.

Q. Do not the signatures on the exhibits appear to be written with a blunter or poorer pen than those in the record?

A. No, there is a difference in the ink; the ink was a little thicker, perhaps, the signatures on exhibits "B" and "D," but I think there was on appreciable difference in the sharpness of the pens.

Q. The signatures on exhibits were evidently written with a pen that let out more ink?

A. It was the position of the pen; you see there are almost hair lines if the pen were in a position to make a hair line, it would do so; but the pen was held so that it did not do its work properly; if you take a glass you can easily see that.

Q. Is that equally true of the signature on exhibit "D"?

A. No, the pen was held more out of position, that is I should say in this way (showing). I am of the opinion that the person who wrote the signature on exhibit "B" did not write these other signatures.

Q. You see some characteristics common to the two?

A. None except that they were both written by a person who had very little knowledge of a pen and handling of it, there is nothing really common between them.

Q. Is not that true of all the signatures?

A. No, sir, the signatures on the pleadings have very strongly marked characteristics, from the first one to the last one; they are very clearly—without any reference whatever to being on the same sort of paper, they are very clearly of the same characteristics, and written by the same person.

Q. A man's signature while he is laboring, say using a pick and shovel and wheelbarrow, hard manual labor, would be somewhat different, would it not, from his signature when he was not?

A. Not necessarily different. I myself sit down and write, after I have hoed a half an acre of ground or chopped wood, and I do not find any particular difference.

Q. Then you say there is practically no difference between the two exhibits?

A. I have not found it so.

Q. Mr. De Long, I call your attention to the signature "Charles H. Newman" to verification to libel, to amendment to amended answer, in the record, which is the admitted signatures of Newman, and I call your attention also to the signature "H. Newman" on Appellant's Exhibit "B," and ask you to examine the capital "N" in each of these signatures, and see if you see any marks of similarity.

A. Why, no, I do not see any, the letters, of course, you may think from appearances that they were intended for the same style of "N," although there is a doubt about that. The capital "N" on the pleading signatures of Charles H. Newman, the reply to the amended answer, is a sort of a mixture of letters, as if he might have attempted to make the round form of "N" and afterwards changed it to something nearly approaching a Spencerian form of capital "N." The different parts of the capital letters there—the capital "N" in both instances begin and end with the same kind of general curve, do they not?

A. No, I do not think so at all; of course, the last stroke does come up there with a hook, but it is a hook

of an altogether different kind. It is not the same kind of a hook.

Q. It is the same kind of a general hook?

A. It is a hook, that is all you can say. If you examine the stroke of the curve you will see that it is not like the other. Now, the pen in making this stroke was held about this position (showing); it shows very plainly from the fact that—the size of the stroke or the weight of the stroke is the same, or very nearly the same, that is on the pleadings, while on exhibit “B” the stroke appears narrower all the way from the bottom. At the best the stroke is very wide until it comes to the point where it begins to turn and there it becomes a hair line, a very fine line.

Q. Now, the pen used in writing the signature in the record shows that there is very little attempt at shading?

A. Yes, that was a stiff pen, a somewhat blunt pen, such as we would call, perhaps, a bank pen.

Q. There is a little difference between the upward and the downward stroke?

A. Yes, it was a stiff pen.

Q. In the beginning of the signatures on the pleadings, however, the upward strokes are lighter?

A. Yes. That would prevent the hooks on the end beginning to end—from appearing as they otherwise might appear, but I do not really think that is the cause of it, at least I do not consider that there is really much ground for comparison between these two hooks. You can simply say there are two hooks there, but they are not alike by any means, no more than the ending of the small letter “n,” it does end with an upstroke in the pleadings

and on exhibit "B," but the upstrokes are altogether different; they are not anywhere similar at all.

Q. A different pen was used, was it not?

A. It does not particularly follow; there may have been a difference in the pen; it is a different kind of a stroke; an entirely different kind of a stroke; in the exhibit the stroke shows the pen was held in an almost correct position, at an angle of 52° , say about 40° , while on exhibit "B" it shows very clearly that the pen was held in an entirely incorrect position; I am not able to judge as to the degree of angle, but it was held almost across instead of parallel.

Q. Can you tell to any certainty what position the pen was held by the writing?

A. I can tell you within a few degrees.

Q. Now, calling your attention to the signature "Charles H. Newman" in the verification to the libel and the amendment to the amended answer and the signature of H. Newman on the exhibit, particularly the one on the end of exhibit "B," and to the letters "N-e-w-m" in each of these signatures, and I will ask you if you see any marks of similarity between them.

A. I do not. To begin with I do not find the letters "Newm" in exhibit "B" at all. I find the letters "Neum."

Q. In exhibit "B"? A. Yes, exhibit "B."

Q. I will ask you to look at them carefully and see if it is not an attempt to make a curl there or to make a "w"?

A. No, I do not consider it so. There is a little widening of the line there but the pen was continuing on in

the same direction. I have not examined that very carefully, but in all probability it was the paper that caused the ink to spread. There are several defects in the paper and the ink spread out and ran down. It was not intended to make a loop there. It is simply the widening of the ink while the ink was drying. }

Q. Then you see no marks of similarity at all between these letters that I call your attention to?

A. No more than would be present always in the forming of letters.

Q. Do you mean to say that these two signatures could not have been written by the same man?

A. Well, not normally. If he were trying to see how far apart he could get in writing the two signatures he might have written the two signatures.

Q. Do you see in any of the signatures in the record of Newman, or any of the signatures on any of the exhibits, any of the characteristics of an expert penman?

A. No. I say this, though, that the person who wrote the signatures in the pleadings had some knowledge of the way of handwriting, that is he had either been taught that the pen should be held in a certain way and that the movement should be rather muscular or else he had acquired it from general observation, while the person who wrote the signatures on exhibits "B" and "D" simply had knowledge enough of penmanship to write certain words.

Q. You mean to say that the writing of the signatures show the marks of an expert?

A. No, there is a great difference in the degree of knowledge of the two men as to penmanship.

Q. As I understand you it is your opinion that the writer of the signatures in the record show a better penman than the signatures on the exhibits?

A. Yes, very much better. He had had very much more practice in writing and to begin with he understood more of the subject, what it should be.

Q. You think if he was more of an expert he could follow that form all through.

A. No, but he knew a little more of the subject.

Q. Now, I call attention to the signature "C. H. Newman" on the verification to amendment to the reply in the record, which is one of the admitted signatures called to your attention, and the signature "H. Newman" on the end of exhibit "B," and particularly to the letters "ewm," and asked you if you see any marks of similarity between this combination of letters.

A. No more than I did between the other comparison I made, simply that they are what they purport to be, some letters from the alphabet, and they must have character enough to show that they are intended for these letters. There is nothing in common between them, not any more than to show that they are intended for the same letters from the alphabet, except that the letter "w" appears in one and the letter "u" appears in the other.

Q. What is your present position?

A. Deputy county clerk.

Q. You have been deputy county clerk how long?

A. Three years and a half.

Q. Are the duties of the deputy clerk such as particularly call for the exercise of skill as an expert in penmanship?

A. No, sir, but I have been doing expert pen work besides through all that time. |

Q. But the duties of your position do not call for the particular exercise of that skill? | A. No, sir.

Q. You pay out no moneys from the clerk's office on signatures? | A. No, sir.

Q. Or your ability to distinguish signatures?

A. No, sir.

Q. Then you have never held a position in which you were required to pay out money on your ability to distinguish signatures?

A. No, sir. I did not get my knowledge of penmanship from that. My knowledge of penmanship comes from the study of penmanship with a view of learning all that I could learn in that line. Penmanship is a science, and I studied it both to teach it and to identify and examine handwritings.

Redirect Examination.

Q. (By Mr. MARTIN.) You have made quite a study of that, have you not?

A. Yes, I have made it a very great study. Seventeen years ago I began the study with the object of becoming an expert. I recognized that there was an opening in that field for work of that line, and for the last six or seven years I have held myself out, more or less as an expert in these lines, and have been called in a great many cases in court and in private consultation.

Q. You have frequently testified in court here in this State? A. Yes, sir.

Q. As an expert on penmanship and signatures?

A. Yes, sir.

Q. And you are called in frequently in important matters in litigation where questions of signatures come up?

A. Yes, sir.

Q. And have been called in for the past several years?

A. Yes, sir, six years.

(Testimony of witness closed.)

Mr. J. G. McPHEE, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (By Mr. MARTIN.) How long have you lived in the city?

A. Ten years.

Q. What business are you engaged in now?

A. I am paymaster for H. C. Henry.

Q. And you have occasion to examine signatures to some extent, do you not, in your business?

A. Yes, sir.

Q. And do examine them?

A. Yes, sir.

Q. And pay out considerable money upon your judgment as to whether the signature is correct signature of the party it purports to be?

A. Yes, sir.

Q. How long have you been doing that kind of work?

A. Ten years.

Q. Henry, Balsh & Co.?

A. Yes, Henry and Balsh.

Q. They are general contractors, are they, railroad contractors?

A. Yes.

Q. And have large contracts?

A. Yes, I have been with H. C. Henry, and Henry, Balsh & Company and Henry & Bennett.

Q. They have done a very extensive business?

A. At times, yes.

Q I will ask you to examine the signatures on these pleadings, of Charles H. Newman, that is the admitted signature of the appellee in this case in the original record, and also examine the signature of H. Newman appearing on Appellants Exhibit "B," and state whether in your opinion the signatures of Newman on the pleadings and the signature of Newman on Appellant's Exhibit "B" were written by the same person?

A. No, I do not think so; in my opinion it is not.

Q. I also ask you to examine Appellant's Exhibit "D" and state whether or not the words "John Newman" which appears on that was written by the same person that the name Charles H. Newman on these pleadings were written by?

A. No, I do not think it was.

Cross-Examination.

Q. (By Mr. JUREY.) Mr. McPhee, what character of signatures are you called upon to compare, in your business.

A. Laborers.

Q. The signatures of laborers?

A. Mostly altogether.

Q. As I understand, the time check is issued to the laborer by the foreman or boss, and he is required to sign it in the presence of the foreman or the foreman requires him to sign it?

A. Yes, sir.

Q. Then that time check is presented to you and he is required to sign again, is he not?

A. Yes, sir.

Q. And receipt for the money.

A. Yes, sir.

Q. And sign the payroll?

A. Yes, sir.

Q. And it is a comparison of these signatures that you have been compelled to pass upon and compare?

A. Yes, sir.

Q. You have never attempted to make a scientific examination of signatures?

A. No, I never have.

Q. Simply in a rough way examine the signatures of laborers? A. Yes, sir.

Q. Now, in your examination of the signature of the laborer, he is in your presence, and if it is in any way dissimilar, sufficient to create a suspicion, why you call for the identification of the laborer do you not?

A. Yes, sir.

Q. That is very easy to procure, is it not?

A. No, it is not; it is not easy for him to procure identification; a great many of the men are strangers in town; of course some are known.

Q. Your foreman could identify him?

A. Yes, sir.

Q. The man who was entitled to the pay?

A. Yes, sir.

Q. And the sums paid these laborers are comparatively small are they not?

A. Well, they vary from less than a dollar to seventy-five and eighty dollars.

Q. As a rule they draw their pay quite often?

A. Yes.

Q. And as a general rule the sums are comparatively small? A. Yes.

Q. It is a rare occurrence if it amounts to seventy-five or eighty dollars?

A. Yes, they are the exceptions; that is mostly in case of the foreman or something of that kind the labor-

ers run from twenty to thirty and thirty-five dollars, that is about the average.

Q. Now, I call your attention to the signature of Charles H. Newman to the verification of reply to amendment to amended answer in the record, which is one of the admitted signatures, and then call your attention to the signature of H. Newman to the end of Appellant's Exhibit "B," and particularly to the capital letter "N" in Newman, and ask you if the general appearance of these two letters is not very similar.

A. No. You notice the slope there is much greater than this, almost perpendicular, while this has a slope. I think in most of them there is more slope; I go a great deal by the slope. That one, if you notice, is very straight, almost perpendicular, where this has considerable slope.

Q. You think there is more similarity in the general slope of the small letters?

A. Yes, I think there is more similarity in the small letters than there is in the capital letters. I do not think the capitals are at all alike.

Q. That capital is begun and ended in the same way, the curl is the same?

A. Well, letters are frequently like this, formed on the same plan, same style.

Q. Now, I will ask you, at the end of the name "Newman" in the signature in the record that I have just called your attention to, and the signature "Newman" on the end of Appellant's Exhibit "B," disregarding the initial, if you do not see a general similarity in these two names?

A. No, I do not think there is; of course there is some, because you have certain letters of the alphabet and must be somewhat similar in form, but there is a great difference; in that "a" it stops there (showing). It stops at the end of the "m" and starts the "a" separate, which is something they usually do, stop at some place when a man signs his name.

Q. Disregarding that fact, you say there was a degree of similarity between these two names?

A. Yes, there is somewhat; in writing the letters and connecting them there is some similarity, of course.

Q. Now, calling your attention to the letters "ewm" in both of these signatures, if there is not more similarity in this combination?

A. Here is the dissimilarity, as you notice that "w" goes up and starts into the "m," also you will notice that all through on the others; I notice particularly the "w" is the same way, the "m" starts up higher than the "w" and this one here starts lower down and forming the "n."

Q. Is there not an attempt at a break or a division between the "w" and the "m," like an attempt to make a curl?

A. It looks that way. It looks as though there was a soft spot in the paper. That might be a break or it might be a place where the surface of the paper is rough and a little of the ink is spread out; I could not say.

Q. It is evidently a defect in the attempt to curl this light joining of the "w," like the signature in the record?

A. Well, it is not a curl like that at all.

Q. I will ask you to compare the "m" in the two sig-

natures and see if there is not a marked similarity between them, particularly the first stroke?

A. No, this stroke comes right straight down, while this one has a curl.

Q. In the record are not the tops of the "m," are not the first two tops round somewhat as they are in the same letter in the exhibit?

A. The middle one is, the two end ones are not.

Q. The last one has a rounded top?

A. Well, I don't really call these round.

Q. Now, calling your attention to the signature "C. H. Newman" to verification of the amendment to the libel in the record, and the same signature on the end of Appellant's Exhibit "B" and the letters "ewm" in the word "Newman," I will ask you if there is not a similarity between these combinations.

A. Yes, there is a similarity; all the letters are about the same size, except that "w" continues up further; they are the same letters formed in the same connection. I do not think they were written by the same hand, though. I think all through this is a more rounding hand, while this one here is what is called an Armstrong hand.

Q. You have had a good deal to do, you say with the signatures of laboring men?

A. Yes, sir.

Q. Have not you noticed that the signature of a man when he is laboring, when he has been laboring at hard manual labor, shoveling and handling a wheelbarrow, if there is not a marked difference in his signature and when he is not laboring and he has not been laboring for quite a while?

A. Well, I do not know as I have ever had the same man write his name when he had not been laboring and then when he had. Because usually as soon as they stop working they come in and get their pay the first thing.

Q. Do not you think that would make considerable difference in the appearance of a man's signature?

A. It might. I do not think it would make any difference in the formation of the letters, it might in the general appearance. I don't know.

Q. I will ask you if the signatures to the exhibits do not appear to be written with a blunter or poorer pen than the signatures in the record had been, as a general thing, a pen that used more ink?

A. I think this was written with a coarser pen; there is more ink here than there is there.

Q. Do not you think that would make a difference in the appearance of the signatures?

A. It would make a difference in the appearance, but it would not make a difference in the character of the writing.

Q. Do not you think that the use of different initials, the initials on the exhibits being "H. Newman" and "John Newman" and in the record "C. H." and "Charles H. Newman," would make a difference in the general appearance of the whole signature, looking at the signature as a whole?

A. Looking at it as a whole, glancing at it as a whole it is a different signature, yes, it is a different name.

Q. I mean that it would make a difference in the appearance of the handwriting and character of the signature?

A. No, I do not think so, because the initials are so few; the name has six or seven letters, a larger name.

Redirect Examination.

Q. (By Mr. MARTIN.) You were paymaster of Henry when they were with the Great Northern Railroad? A. Yes, sir.

Q. And on several branches on the N. P.

A. Yes.

Q. And during the present construction of the Palmer cut-off? A. Yes.

Q. They were general contractors for the Great Northern?

A. Yes, they were head contractors; they sublet it. (Testimony of witness closed.)

WM. MARTIN, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

At the close of Gen. Metcalfe's testimony on behalf of the claimant, on Saturday, the 23d day of September, he asked me if the libelant would submit to a medical examination before the present commissioner. I saw the libelant on Monday the 25th day of September and I told Gen. Metcalfe, proctor for the claimant, that the libelant would submit to a medical examination and for him to name such physicians as he desired to have make the medical examination, and have it made within the week if possible; he refused to name any physicians at that time. I then made an application to the Court to have the testimony filed, which was brought up, I believe, on the 30th of September.

Mr. JUREY.—I object to statements of counsel, for the reason that it is not the best evidence; the Court's records are the best evidence.

A. And the Court denied the application as Gen. Metcalfe stated he had other witnesses which he desired to have give their testimony. The case then ran along, and no steps were taken until in November, towards the taking of any further testimony, although the libelant was right here handy, and a medical examination could have been made at any time from September 25th on until the time the case was closed November 15th, 1899. No testimony having been taken I prepared an order in the early part of November, which I had General Metcalfe O. K., giving him until the 15th of November in which to close the taking of his testimony, which was signed by the Court, and that shortly previous to the expiration of the time mentioned in that order, I frequently saw Gen. Metcalfe and requested him to have his medical examination made within the time prescribed in that order. He had had his testimony all written out, which was given by the libelant's physicians a long time previous to that. He did not show any inclination to have the medical examination made, except in one instance and that was on the Saturday about the 11th, I think, of November, at a time at which I was engaged in the Superior Court, but I was informed that my partner Mr. Griffin agreed to go with him, if he wished to have the medical examination made on the afternoon of that Saturday. I cautioned him on the 13th and 14th, called him up on the 'phone, to have his medical examination made within the time, and told him if he did not

have it then I would resist his having a medical examination made of the libelant. After the time had expired in which to close his testimony, he made an application to the Court for an order to compel the libelant to submit to a medical examination. That application came up for hearing before Judge Hanford, I believe, on the 22d of November, wherein the matter was presented to the Court on that application.

Mr. JUREY.—I object to counsel's statement because it is not the best evidence; the record of the Court is the best evidence.

A. (Continuing.) After the time had expired in which he was given to put in his testimony, I stated in open court to Judge Hanford, in the presence of Gen. Metcalfe, that notwithstanding the fact that he had not taken his testimony within the time required, I would there and then consent on behalf of the libelant to the Court, Judge Hanford presiding, to name such physicians as he might use, and have a medical examination made of the libelant. Gen. Metcalfe immediately arose and objected to the Court naming any physicians to make a medical examination of the libelant, and stated in open court that unless he could have the examination made by his two physicians named by him that he refused to consent to a medical examination being made. The Court thereupon denied his application. I will further state that there was no time between September 25th and the 15th of November but what he could have had a medical examination, if he desired, and I so notified the proctor for the claimant, Gen. Metcalfe. I have here a picture of the libelant, or appellee, Charles H. Newman, taken prior to the time of his injury, which is a correct likeness

of the appellee, prior to his injury, which I offer in evidence. His wife also appears in the picture. So far as being a correct likeness of Charles H. Newman I know it to be. And I ask to have it marked as an exhibit.

Mr. JUREY.—I object to the offer for the reason that it is incompetent, irrelevant and immaterial. It is not shown to be a correct likeness of Mr. Newman or when it was taken.

A. (Continuing.) I will further state that I was acquainted with Charles H. Newman prior to the time of his injury, and had charge of and collected money for him, wages, and knew him quite well, and that this picture is a correct likeness of him shortly prior to the time he was injured in the collision of the steamship "Homer" with the brigantine "Blakeley," at the time at which he was injured.

(Picture marked Appellee's Exhibit "2," filed and returned herewith.)

Cross-Examination.

Q. (By Mr. JUREY.) Mr. Martin, is it not a fact that you resisted the application of the claimant for an order of the Court to permit a surgical examination of the libelant?

A. No, sir, it is not. I consented in open court to Judge Hanford naming two physicians to make a medical examination or a surgical examination, as you have called it, of Newman, but I did object to an examination being made by Dr. Ford and Dr. Eagleson, the two doctors that you insisted on making the examination. Dr. Ford attended Mr. Newman immediately after the time

he was injured and while he was in the hospital, and until he was discharged by Mr. Newman, and knew of his condition at that time, and you have not called him here. He was called, but you did not ask him anything concerning it, so that there was a feeling between the two doctors, and in addition to that I had known that Gen. Metcalfe had taken the testimony of these physicians to examine the testimony of the libelant's physicians, and I believed that their testimony would be influenced by that fact, and that he would have a general knowledge before they made an examination as to what they were going to testify to, and that was my reason in objecting.

Q. Mr. Martin, is it not a fact that you served and filed and used your own affidavit against the application made by the claimant for a surgical examination, which is copied on page 408 of the testimony in the printed record.

A. Yes, I filed that in resistance of your application for an order to have a medical examination made, surgical examination made, as you call it, for Drs. Ford and Eagleson, and the facts stated in that affidavit were not contradicted.

Q. As I understand you, at the time of this application to the District Court you were willing for the Court to name physicians and direct an examination?

A. Yes, and I consented in open court to Judge Hanford doing that; and I also requested Gen. Metcalfe frequently, when he was insisting on having these two doctors to take some other doctors that had just as good reputations here, and there would be no objections to that.

Q. Why did not you have such an examination made upon your own account then?

A. I had several physicians who had attended Mr. Newman and who had made several examinations, and they had testified in the case, and I did not deem it necessary.

Q. Is it not a fact that the physicians that you examined as to Mr. Newman's condition, testified during the month of August last?

A. The record will show when they did testify; I believe it was some time along there.

Q. And the application was made in the latter part of November? A. I think so.

Q. A demand was made upon you, Mr. Martin, since this case has been referred to take additional testimony, for leave to make a surgical examination of the appellee, by Drs. Eagleson and Ford? A. Yes, sir.

Q. And you have refused to comply with the request and demand? A. Yes, that is correct.

Q. Were you willing for an examination to be made of the appellee? A. Was I willing?

Q. That is the question, yes.

A. Not by Doctors Ford and Eagleson; no, sir; because I believe you knew what they were going to testify to beforehand.

Q. You made your reply in writing, did you not, to this last demand?

A. I gave you a reply, yes, so that there would be no misunderstanding as to how that stood.

Q. In that reply did you make objection to either Dr. Ford or Dr. Eagleson?

A. I do not remember that, but I believe your allegation was to have them make the examination.

Q. Did I not at the time I served that last demand upon you, state to you if Dr. Ford was personally obnoxious to you, or any one connected with your side of the case I would select some one else?

A. Yes, that is what you stated when you served notice on me; I asked you if you would consent to Judge Hanford naming three or five physicians, I believe it was, to make a medical examination, and you said no, you would not. That was about as you were starting to go to the outer door; you turned around and came back and made the suggestion if Dr. Ford was so particularly obnoxious to us that you would consent to some other doctor being named.

Q. But you stated, and also in your written reply, that you asked if we were willing for Judge Hanford to name the physicians or surgeons?

A. Yes; you said you were not.

Q. Why did not you have such examination made yourself on your own responsibility?

A. Because I did not consider it necessary; the record showed, in my opinion, the true condition that the man is in, and has shown it all through.

Q. To your personal knowledge, Mr. Martin, has not Mr. Newman improved since he was examined by the physicians that testified in his behalf in this case?

A. Yes, Mr. Newman has improved since the time he was examined by the physicians in this case, but the improvement has not been such as to indicate that the man is ever going to be anything else than a cripple, and in my opinion he will be a cripple as long as he lives, never will be able to perform any manual labor at all.

Q. That is your judgment?

A. Yes, and I have seen him quite frequently. I have called at his house quite a number of times since he has been hurt, and for months he was lying on his face. Then he got so that he could lie on his back, but he could not do so for a long time, and the man was in constant pain whenever I saw him until he got so that he could be propped up; he did not show much indication then of pain. That was late in the year, as I recollect it. But he now has to keep his back in a perfectly straight position; he can only bend it at the pelvis.

Mr. JUREY.—I object to the statement of counsel; it is not responsive to any question, and the witness is not shown to be competent to testify as to such matters.

A. (Continuing.) The only movement he has is on the pelvis with the femer bones of the legs, a sort of a hinge motion, and he is very slow in rising up, and he has to use his hands and arms to practically lift his body up when he does rise.

Q. You are not a surgeon or physician?

A. No, sir; but I have seen the appellee do that frequently.

Q. Then you just submit your case upon the examination that you have made rather than have it made by a surgeon, as to his condition?

A. I submitted the case made on the examination of the physicians, as good physicians as there are in the city, and examined with Gen. Metcalfe, and Gen. Metcalfe did not dare to have an examination made until after the Judge had allowed all that could be allowed, and I consented, when the cause was originally brought, as I did not understand how badly the man was injured, and the

case had to be started when I could attach the ship, and when you could not get a bond I consented to a bond for twelve thousand dollars instead of putting up one of thirty thousand dollars.

Q. The steamship "Homer" could have put up any bond?

A. It was so stated to me. I wanted you to put up one for fifteen thousand dollars, and you said you had agreed with Neufelder and Goldsmith to go on the bond for twelve thousand dollars, and you did not like to have to go back and change it, and at your request, Mr. Jurey, I finally consented to twelve thousand dollars, a bond signed by Goldsmith. Now, after the Judge had allowed all that could be allowed in the case, it was the bond that was the limit of the recovery, then, after that was done, and you had nothing to lose, you wanted the Court to have a medical examination allowed.

Q. Then you refused the surgical examination because you reduced the amount of the bond that was required to be given?

A. I say that was one reason you wanted it, because the Court had allowed the full amount of recovery and could not allow any more, providing this surgical examination showed the man to be injured still more. I believe if a surgical examination had been made before this case was submitted that it would disclose his injuries to be greater than the physicians stated, because they were very careful in putting it on the safe side.

Q. If you believed that, did not you think it was your duty to have that examination made?

A. Well, I thought that you would have one made,

that is the truth about it, and that your examination would disclose greater injuries than my examination showed.

Q. But when you found we did not make the examination you did not make it. You thought you would rather trust the case without it.

A. No, not necessarily.

Mr. JUREY.—I desire to give notice to counsel in open court that as soon as he has concluded taking his testimony that I will put in my rebuttal testimony. That it is impossible at this time, five o'clock, to obtain my witnesses, and that we will offer our rebuttal testimony at ten o'clock Monday, July 2, 1900.

Mr. MARTIN.—Did you have any witnesses here at 2 o'clock?

Mr. JUREY.—No, they were waiting at another place.

Mr. MARTIN.—What are the names of the witnesses you want to testify?

A. I decline to disclose their names until they are put on the stand.

Mr. MARTIN.—If you have any witnesses I would like to have their names go in the record. I think it is but fair, if you are in good faith and want to take any more testimony, although I will not consent that such be done.

Mr. JUREY.—I decline to answer counsel.

Mr. MARTIN.—I have been here since two o'clock and have not observed any persons that you had here at that time to take any testimony. I believe you stated this forenoon that you would have them here at that time, and I did not see any of them.

Mr. JUREY.—Counsel will not deny, I presume, that

he has been taking testimony continuously since 2 o'clock until this time?

Mr. MARTIN.—I do not deny it.

(Testimony of appellee closed.)

United States of America,)
 District of Washington,) ss.
 Northern Division.)

Certificate of United States Commissioner.

I, A. C. Bowman, United States Commissioner for the District of Washington, do hereby certify that:

The annexed and foregoing transcript of testimony and proceedings, from page 1 to page 500, inclusive, was taken before me at the times and in the manner therein specified.

Each of the witnesses therein named, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

The signature of each of said witnesses to his testimony was duly waived by the parties, the testimony of said several witnesses to be received with the same force and effect as if signed by said witnesses.

The exhibits offered by the appellants and filed and marked by me Appellants' Exhibits "A," "B," "C," "D," "E," "F," and "G," and the exhibits offered by the appellee, and filed and marked by me as Appellee's Exhibits 1, 2 and 3 are returned herewith.

I further certify that I am not proctor nor of counsel for either party to said suit, nor interested in the result thereof.

In witness whereof I have hereunto set my hand and affixed my official seal, this seventh day of August, 1900.

[Seal]

A. C. BOWMAN,
United States Commissioner.

COMMISSIONER'S FEES.

Appellants:

May 23, 30, June 1, 11, 12, 13, 14, 15 @ \$3.	\$24.00
To administering oath to 16 witnesses @ 10c.	1.60
To filing 7 exhibits @ 10c.70
To 565 folios original testimony @ 10c.	56.50
	<hr/>
	\$82.80

Appellee:

June 21, 23, 27, 30, @ \$3.	\$12.00
To administering oath to 24 witnesses @ 10c.	2.40
To filing 3 exhibits @ 10c.30
To 775 folios original testimony @ 10c.	77.50
	<hr/>
	\$92.20

Appellants' Exhibit "A."*United States Circuit Court of Appeals for the Ninth Circuit.*

J. F. HIGGINS, Master S. S. "Homer,"	}	No. 598.
Appellant,		
vs.		
CHARLES H. NEWMAN,	}	
Appellee.		

The President of the United States of America, to the
 Marshal of the District of Washington, Greeting:

You are hereby commanded to summon Charles F. Newman to be and appear before me, A. C. Bowman, a commissioner of the District Court of the United States for the District of Washington, at my office, room 200, Burke building, Seattle, Washington, at 3:30 o'clock P. M., on the 11th day of June, A. D. 1900, to give testimony in the above-entitled cause, in behalf of the appellant.

Hereof fail not, under penalty of the law, and have you then and there this writ.

Given under my hand this 11th day of June, 1900.

[Seal]

A. C. BOWMAN,
 U. S. Commissioner.

UNITED STATES MARSHAL'S RETURN.

United States of America, }
District of Washington. }

I hereby certify that I served the within writ on Charles H. Newman by leaving with him a copy of the within writ, this 11th day of June, 1900, about 2 P. M.

C. W. IDE,
U. S. Marshal.
G. L. Ide,
Deputy.

[Endorsed]: No. 598. In the Circuit Court of the United States, Ninth Circuit. J. F. Higgins, Master of S. S. "Homer," et al., Appellants, vs. Charles H. Newman, Appellee. Appellants' Exhibit "A." Filed June 11, 1900. A. C. Bowman, United States Commissioner, District of Washington.

Appellants' Exhibit "B."

No. 2. West Seattle, March 20, 1900.

This certifies that H. Neuman has been employed as axeman on street-car line from —— to ——, inclusive.

Time employed, —— days at ——.

Deductions.

Balance due on ——, 1900.....\$8.55

Signed, NEAL MURPHY.

Received payment,
H. NEWMAN.

Signature of Employee:
H. NEWMAN.

[Endorsed]: No. 598. In the Circuit Court of the United States, Ninth Circuit. J. F. Higgins, Master of S. S. "Homer," et al., Appellants, vs. Charles H. Newman, Appellee. Appellants' Exhibit "B." Filed June 11, 1900. A. C. Bowman, United States Commissioner, District of Washington.

Appellants' Exhibit "C."

No. 2. West Seattle, March 20, 1900.

This certifies that H. Nueman has been employed as axeman on street-car line from ——— to ———, inclusive.

Time employed, 5 8-10 days at \$2.25.....	
Deductions, board.....	\$4.50
Balance due on —, 1900.....	

Signed, NEAL MURPHY.

Received payment of board,

T. J. MURPHY,

Manager West Seattle Hotel.

Signature of Employee:

[Endorsed]: Appellants' Exhibit "C." No. 598. In the Circuit Court of the United States, Ninth Circuit. J. F. Higgins, Master of S. S. "Homer," et al., Appellants, vs. Charles H. Newman, Appellee. Filed June 11, 1900. A. C. Bowman, United States Commissioner, District of Washington.

Appellants' Exhibit "D."

No. 32. West Seattle, April 11, 1900.

This certifies that J. Newman has been employed as laborer on car line from —— to ——, inclusive.

Time employed, 5½ days at \$2..... \$11.00

Deductions, board..... 4.62

Balance due on April 11th, 1900..... \$6.38

Signed, NEAL MURPHY.

Received payment,
JOHN NEWMAN.

Signature of Employee:
JOHN NEWMAN.

[Endorsed]: Appellants' Exhibit "D." No. 598. In the Circuit Court of the United States, Ninth Circuit. J. F. Higgins, Master of S. S. "Homer," et al., Appellants, vs. Charles H. Newman, Appellee. Filed June 11, 1900. A. C. Bowman, United States Commissioner, District of Washington.

Appellants' Exhibit "F."

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

J. F. HIGGINS, Master of the Steamship
"Homer," and J. S. GOLDSMITH and
F. M. GRAHAM, his Stipulators,

Appellants,

No. 598.

vs.

CHARLES H. NEWMAN,

Appellee.

DEMAND FOR SURGICAL EXAMINATION OF AP-
PELLEE BEFORE THE U. S. COMMISSIONER,
ON REFERENCE TO TAKE ADDITIONAL TES-
TIMONY.

To Charles H. Newman and Messrs. Martin, Joslin &
Griffin, his Proctors:

You and each of you will please take notice that the ap-
pellants in the above-entitled cause, through the under-
signed, their proctors, hereby most respectfully request
and demand of you, and each of you, permission and op-
portunity to make a surgical examination of the person
of you, the appellee, by Dr. James B. Eagleson, in charge
of the United States Marine Hospital Service at Seattle,
Washington, office, 512 Burke Building, and Dr. Charles

B. Ford, his associate in business, of the same place and address, two reputable, skillful, and regularly licensed and practicing physicians and surgeons now and for years last past in the city of Seattle and vicinity, to determine the nature and extent of the injuries alleged to have been received by the appellee in the collision mentioned in the pleadings in the above-entitled cause, and the present physical condition and probable future condition of the appellee resulting from such alleged injuries.

The appellants are willing that such examination be made at any suitable or reasonable place and time convenient to you, to insure the consummation of the same within the time allowed to appellants for taking additional testimony; and, if you desire it, in the presence of A. C. Bowman, Esquire, United States Commissioner, to whom this cause has been referred by the above-entitled Court for taking additional testimony, and such reputable physicians and surgeons or other persons as you may desire to be present, or any of them.

As misunderstandings have arisen upon former similar demands to this, the appellants have thus made their request and demand in writing, and request and require your reply in writing also, and an immediate reply is requested.

Dated at Seattle, Washington, this 8th day of June, 1900.

METCALFE & JUREY and
ANDROS & FRANK,

Proctors for Appellants.

State of Washington, }
County of King. } ss.

L. W. Nelson, being first duly sworn, upon his oath says: That he is and was at all the times herein mentioned a citizen of the United States, above the age of twenty-one years, a resident of West Seattle in King county, State of Washington, and constable of West Seattle precinct, in said King county, and has no interest in and is competent to be a witness in the above-entitled cause. That he served the foregoing notice on Charles H. Newman, the appellee therein named, on the 8th day of June, 1900, in said King county, by then and there delivering to and leaving with said Newman, personally, a true copy of the same.

L. W. NELSON.

Subscribed and sworn to before me this 12th day of June, 1900.

[Seal]

JOHN S. JUREY,

Notary Public in and for the State of Washington, Residing at Seattle in said State.

We hereby admit due and proper service of the foregoing notice and demand and receipt of a copy of the same this 8th day of June, 1900.

MARTIN, JOSLIN & GRIFFIN,

Proctors for Appellee.

[Endorsed]: No. 598. In the United States Circuit Court of Appeals for the Ninth Circuit. In Admiralty. J. F. Higgins et al., Appellants, vs. Chas. H. Newman, Appellee. Demand for Surgical Examination of Appellee. Metcalfe & Jurey, rooms 417, etc., Seattle National Bank Bldg., Seattle, Wash., of Proctors for Appellant.

[Endorsed]: Appellants' Exhibit "F." No. 598. In the Circuit Court of the United States, Ninth Circuit. J. F. Higgins et al., Appellants, vs. C. H. Newman, Appellee. Filed June 13, 1900. A. C. Bowman, United States Commissioner.

Appellants' Exhibit "G."

In the United States Circuit Court of Appeals, for the Ninth Circuit.

J. F. HIGGINS, Master of the Steamship "Homer," and J. S. GOLD-SMITH and F. M. GRAHAM, his Stipulators,

Appellants,

vs.

CHARLES H. NEWMAN,

Appellee.

No. 598.

REPLY TO DEMAND FOR SURGICAL EXAMINATION.

To the above-named appellants, and to their proctors,
Messrs. Metcalfe & Jurey:

You and each of you will please take notice that the appellee in the above-entitled cause did, on the 25th

day of September, 1899, notify you and each of you that the appellee would consent to a medical examination being made by such physicians as you would then and there name (Record, pages 366, 367, 368), but that you then and there refused to name any physicians to make a medical examination of the appellee, and refused to name any such physicians to make such medical examination until after you procured a copy of the appellee's testimony and had taken the same to physicians in the city of Seattle and endeavored to procure their testimony in contradiction thereof, and not until you had secured two physicians upon whom you could depend to contradict the testimony given by appellee did you name physicians to make such medical examination. Notwithstanding that fact, however, appellee consented that you have a medical examination made by said physicians on the 30th day of September, 1899, and on the 4th day of November, 1899, and especially on the 13th day of November, 1899, and that you continued and refused to have a medical examination made, and you were notified by appellee that unless you had such a medical examination made by the 15th day of November, 1899, that appellee would refuse to consent to having a medical examination made and would withdraw his consent to have one made.

That an order was made by the District Court fixing the 15th day of November, 1899, as the latest date upon which appellants would be permitted to take testimony, which order was O. K. by J. B. Metcalfe, proctor for appellants, and bears date November 4th, 1899, and after the time stated in said order within which appellants

were required to complete their testimony the appellants made an application to the Hon. C. H. Hanford, District Judge, for an order requiring the appellee to submit to a surgical examination, and upon the hearing upon said order, on the 21st day of November, 1899, appellee in open court consented to the Hon. C. H. Hanford, District Judge, naming three or five physicians to have a medical examination made, and appellee consented then and there to pay one-half of the cost of such an examination. That appellants in open court before said District Judge refused to permit said Court to name any physicians, and refused to have a medical examination made unless the same would be made by the physicians named by appellants, to wit: Dr. James B. Eagle-son and Dr. Charles B. Ford. Whereupon said Hon. C. H. Hanford refused to make an order requiring the appellee to submit to a surgical examination.

That at the time proctors for appellants served their demand to which this reply is made upon proctors for appellee, proctors for appellee asked proctor for appellants if he would consent to have the Hon. C. H. Hanford, District Judge, name three physicians or more, or such number of physicians as proctor for appellants would suggest, to make a medical examination, to which proctor for appellants notified proctor for appellee that they would not consent to the Hon. C. H. Hanford naming such physicians, but insisted that any examination that might be made should be made by physicians named by appellants.

You are, therefore, notified that the appellee refuses his consent to the demand for a surgical examination made by you herein.

Dated at Seattle, Washington, this 9th day of June,
A. D. 1900.

MARTIN, JOSLIN & GRIFFIN,

Proctors for Appellee.

[Endorsed]: No. 598. In the Superior Court, King County, State of Washington. J. F. Higgins et al., Appellants, vs. Charles H. Newman, Appellee. Copy. Reply to Demand for Surgical Examination. Recd. June 9, 1900. M. & J. Martin, Joslin & Griffin, 205, 206 and 207 Collins Building, Seattle, Wash., Attorneys for Appellee.

[Endorsed]: Appellants' Exhibit "G.". 598. In the Circuit Court of the United States, Ninth Circuit, J. F. Higgins et al., Appellants, vs. Chas. H. Newman, Appellee. Filed June 13, 1900. A. C. Bowman, U. S. Com'r.

Appellants' Exhibit "H."

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

J. F. HIGGINS, Master of the Respond-
ent Steamer "Homer," Claimant, and
J. S. GOLDSMITH and F. M. GRA-
HAM, Stipulators,

Appellants,

vs.

CHARLES H. NEWMAN,

Appellee.

No. 598.

NOTICE OF TAKING TESTIMONY IN REBUTTAL.

To Charles H. Newman, Appellee, and Messrs. Martin,
Joslin & Griffin, his Proctors:

You and each of you will please take notice that the appellants, by the undersigned, of their proctors, will, on Saturday, the 30th day of June, 1900, at the hour of 2 o'clock P. M. of that day, or as soon thereafter as counsel can be heard, before A. C. Bowman, Esquire, United States Commissioner, to whom this cause has been referred by the above-entitled Court for taking additional testimony, at his office in the Burke Building, in the city of Seattle, King county, State of Washington, offer testimony in rebuttal, and will then and there cause witnesses

to be produced, sworn, and to testify in rebuttal to the testimony offered by you herein.

You and each of you will please take further notice that, if you desire to offer or take testimony herein at the time hereinabove mentioned, appellants will not in any manner interfere with or obstruct the taking of the same, but will offer and take such rebuttal testimony after you shall have concluded the taking of your testimony at such time.

METCALFE & JUREY,
Of Proctors for Appellants.

Received copy of the foregoing notice this 29th day of June, 1900.

MARTIN, JOSLIN & GRIFFIN,
Proctors for Appellee.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. J. F. Higgins et al., Appellants, vs. Chas. H. Newman, Appellee. Notice of taking testimony in rebuttal. Metcalfe & Jurey, Rooms 417, etc., Seattle National Bank Bldg., Seattle, Wash., of Proctors for Appellants.

[Endorsed]: Appellants' Exhibit "H." No. 598. United States Circuit Court of Appeals, Ninth Circuit. J. F. Higgins et al., Appellants, vs. Chas. H. Newman, Appellee. Filed June 30, 1900. A. C. Bowman, United States Commissioner.

Appellee's Exhibit No. 1.

[Envelope addressed to Mrs. Harry Neuman, West Seattle, W. N. Stamped, Apr. 6, 9 A. M., 1900, Wash. Two cent U. S. postage stamp, canceled, in right-hand corner. Stamped on reverse side, West Seattle, Apr. 7, 1900, Wash. Appellee's Exhibit 1. C. B. E. 6-23-00.]

[Endorsed]: No. 598. In the United States Circuit Court of Appeals, Ninth Circuit, J. F. Higgins, Appellant, vs. Chas. H. Newman, Appellee. Filed June 23, 1900. A. C. Bowman, United States Commissioner.

Appellee's Exhibit No. 2.



[Endorsed]: Appellee's Exhibit No. 2. No. 598.
United States Circuit Court of Appeals, Ninth Circuit.
J. F. Higgins et al., Appellants, vs. Chas. H. Newman,
Appellee. Filed June 30, 1900. A. C. Bowman, United
States Commissioner.

[Endorsed]: No. 598. In the United States Circuit Court of Appeals for the Ninth Circuit. J. F. Higgins, Master and Claimant of the Steamship "Homer," Appellant, vs. Charles H. Newman, Appellee, and J. F. Higgins, Master and Claimant of the Steamship "Homer," and J. S. Goldsmith and F. M. Graham, Stipulators, etc., Appellants, vs. Charles H. Newman, Appellee. Appeals from the District Court of the United States for the District of Washington, Northern Division. Testimony. Appellants' Exhibits "A," "B," "C," "D," "E," "F," "G," and "H," and Appellee's Exhibits 1 and 2 attached.

Filed August 13th, 1900.

F. D. MONCKTON,

Clerk.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

J. F. HIGGINS, Master of the Respondent
Steamer "Homer," Claimant, and J. S.
GOLDSMITH and F. M. GRAHAM, Stipu-
lators, *Appellants,*
vs.
CHARLES H. NEWMAN, *Appellee.*

FILED
MAY 1 - 1900

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.
IN ADMIRALTY.

BRIEF OF APPELLANTS

METCALFE & JUREY,
SEATTLE, WASH.,
and ANDROS & FRANK,
SAN FRANCISCO, CAL.,
Proctors for Appellants.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

J. F. HIGGINS, Master of the Respondent Steamer "Homer," Claimant, and J. S. GOLDSMITH and F. M. GRAHAM, Stipulators,
vs.
CHARLES H. NEWMAN, *Appellee*.

No. 598.

BRIEF OF APPELLANTS

STATEMENT OF THE CASE.

The respondent vessel is a twin screw steam schooner, driven by two separate engines. She is equipped practically with two bridges, one in front of the pilot house and one higher up and just abaft the pilot house. The method and system of communication between the Master upon the bridge and the engineer in the engine-room is by means of a bell or gong upon or near each engine, with separate and distinct wires attached to each and running up to the bridges, with bell pulls

upon each bridge. In addition to the bells, there are speaking or return tubes connecting each engine with the bridge in front of the pilot house. These speaking tubes, in connection with the ventilator a few feet back of the bridge abaft the pilot house, serve for speaking communication between the bridge abaft the pilot house and the engine-room. This was the method and system of communication between the bridge and the engine-room on the respondent vessel at the time of the collision hereinafter mentioned, and, with the exception that the bell wires had been a few days before, by direction of the United States Inspector at Seattle, extended up and back to the bridge abaft the pilot house, with pulls there provided, was the system and method of communication between the bridge and the engine-room of the respondent vessel for many years past, and the same are now and have been for years in common and general use upon vessels of her class.

On the morning of April 26th, 1899, the respondent vessel steamed out from Moran's wharf in the harbor of Seattle, with her port engine going under slow bells and her starboard engine stationery, and thus crossed the harbor in a Northerly direction to Schwabacher's wharf, where she intended to land at the end of the wharf by approaching the same from the South and running along the end thereof.

The Brigantine "Blakely" was moored to the South side of Schwabacher's wharf and in some distance from the end of the wharf towards the shore.

When the respondent vessel came somewhat in line with the end of the wharf at which it was to make a landing, and upon nearing it, the Master gave the proper signals through the bell signal apparatus to back both engines full speed so as to stop his ship and get control of her before reaching the wharf. A latent defect in the bell signal apparatus prevented certain of the signals given from being sounded in the engine-room, the result of which was, the port engine was kept going forward and the starboard engine put to backing full speed. The effect of this counter-action of the engines was, that the vessel was suddenly and sharply swerved from her course to starboard, and headed towards the wharf and the Brigantine "Blakely" moored against the South side of the wharf. The swerving force to starboard of this counter-action of the engines was so sudden and violent that, before it could be detected and stopped or overcome, the ship had swung too far to starboard to be then turned to port and avoid a collision with the wharf and the "Blakely." The Master, then with both engines backing full speed, ordered the wheel "hard aport," hoping and believing he could avoid a collision with the wharf and the "Blakely" by swinging the vessel still farther to starboard, but struck the "Blakely" a glancing blow forward the fore-rigging and slightly damaged her.

The Libellant, at the time of the collision, was on board the "Blakely" repairing her main hatch, and claims to have been injured from being struck in the back by something torn loose and hurled to the deck

of the "Blakeley" by the force of the collision. The Libellant testifies that he was struck in the back by "something" as he was running from the scene of the collision. Neither the Libellant nor anyone else saw anything strike him, and it is simply the surmise of Libellant and his witnesses that he was struck by the "block" which was dislodged in the collision and came down. The testimony and Libellant's admission clearly establish the fact that Libellant had due warning of the collision and appreciated that it was inevitable, and the dangers of it, and instead of fleeing from the position of peril he found himself in, as two other men similarly situated did and who escaped uninjured, he tarried in a dangerous position and even moved nearer to the impact of the collision, as it was imminent and occurring, and thus voluntarily, deliberately and recklessly exposed himself to a greater danger for the purpose of recovering his coat, in the pocket of which was a bank check for \$234.00, which he says he did not want to lose. After recovering the coat and check, he ran, and testifies that he was struck in the back while running, and only a few feet from where he had been working.

The Libellant proceeded in rem against the respondent vessel upon the ground that the collision, in which the Libellant claims to have been injured, resulted from careless, negligent and unskillful navigation of the ship.

The vessel was arrested by the Marshal, but subsequently duly released to the Master, J. F. Higgins, as

claimant, upon claim made and stipulation to the Marshall in the sum of \$12,000, with J. S. Goldsmith and F. M. Graham as sureties.

The Claimant answered (Record 37) denying the material allegations of the Libel and setting up affirmatively that the collision was the result of an inevitable accident, and also (Amendment to Amended Answer, Record 414) that any injury which the Libellant may have received was the result of his own subsequent, voluntary and deliberate acts, recklessly exposing himself to the dangers of the collision.

The final decree was, in the first instance, against the Claimant for \$12,000; and after an appeal from this decree had been perfected by the Claimant, a further or supplemental decree was entered against J. S. Goldsmith and F. M. Graham, stipulators on Claimant's bond for the release of the respondent vessel. This later or supplemental decree was entered over the objection of Claimant and his Stipulators, upon the ground that all further proceedings in the District Court were stayed by the Claimant's appeal. After entry of the decree against the Stipulators, the Claimant and Stipulators served and filed a new notice of appeal, assignment of errors and bond. Thus the whole case is brought up for consideration.

The questions involved are:

- (I) That the collision was an inevitable accident, and the loss must rest where it falls.
- (II) That Libellant's own subsequent, voluntary

and deliberate acts, recklessly exposing himself to the dangers of the collision for the purpose of recovering property belonging to him, was the primary cause of the injury complained of and that the Libellant assumed the risk he took, with all its consequences.

(III) That the evidence does not establish that the collision was the proximate cause of the injury complained of.

(IV) That permanent disability is not established to a reasonable certainty.

(V) That the damages awarded are grossly excessive; that the evidence does not support the awarding to Libellant of any damages at all; and that all proceedings in the District Court were stayed by the rules of that Court and by an appeal at the time the Supplemental Decree of February 19th was made and entered against the Stipulators.

SPECIFICATION OF ERRORS.

The Final Decree of February 5th, 1900, against the Claimant, and decision upon which the same is based, and the supplemental Decree of February 19th, 1900, against J. S. Goldsmith and F. M. Graham, Stipulators, are erroneous in the following particulars, to-wit :

I.

INEVITABLE ACCIDENT.

(1) In finding and holding that the collision between the respondent vessel and the Brigantine "Blakeley," in which it is alleged the Libellant received the injuries complained of, proximately resulted from negligent, careless and wrongful acts on the part of the Master of the respondent vessel, and faults on the part of the said Master, "First, in signaling the engineer to back the starboard engine without first actually knowing that his intended orders to back and reverse the port engine had been executed by the engineer. Second, in not giving attention to the helm, which is the means provided for controlling the course of a vessel under way, and neither one of these errors can be excused by reason of an unknown injury to the pintle."

(2) In failing and refusing to find and hold that the said collision directly and approximately resulted from a latent defect in the bell signal apparatus of the respondent vessel, which was not and could not have been discovered or avoided by the owners of the respondent vessel or the Master or crew in the exercise of reasonable

care, prudence and skill; and in failing and refusing to hold that the said collision was an inevitable accident, over which neither the owners nor the Master or crew of the respondent vessel had any control or were in any manner responsible or liable therefor.

II.

LIBELLANT'S SUBSEQUENT ACTS PROXIMATE CAUSE OF THE INJURY.

(1) In finding and holding that the Libellant was and is free from fault.

(2) In failing and refusing to find and hold that the Libellant's subsequent, independent, voluntary and deliberate acts of negligence and recklessly exposing himself to the dangers of the collision, after due warning and appreciation of the dangers to which he was exposed, for the purpose of recovering property of trifling value to himself, were the sole and proximate cause of the injury complained of; and in failing and refusing to hold that, by such acts of Libellant, he assumed the risk he took, with all of its consequences, and cannot recover.

III.

COLLISION NOT THE PROXIMATE CAUSE OF THE INJURY.

In finding and holding that the injuries complained of proximately resulted from the Libellant being struck in the back by a 12-inch block torn from the fore yard arm of the Brigantine "Blakeley" and violently hurled by the force and violence of said collision.

IV.

EXTENT AND PERMANENCY OF LIBELLANT'S INJURIES.

In finding and holding that Libellant sustained great and permanent injuries—permanent disability—and awarding damages on that basis.

V.

MISCELLANEOUS.

(1) In finding and holding for the Libellant.

(2) In finding and holding that the Libellant is entitled to substantial damages or to any damages at all.

(3) In finding and holding in favor of the Libellant and against the Claimant and his Stipulators in the sum of \$12,000, the same being grossly excessive; and in finding and holding against the Claimant and his Stipulators in any sum whatever.

(4) In not dismissing the Libel and awarding the Claimant costs herein.

(5) In finding and holding in the Supplemental Decree of February 19th, 1900, that no good and sufficient cause was shown to the Court why the Stipulators upon Claimant's Delivery Bond, J. S. Goldsmith and F. M. Graham, should not have performed the terms and conditions of their Stipulation and have paid the judgment entered herein February 5th, 1900.

(6) In failing and refusing to find and hold that, at the time the Supplemental Decree of February 19th was made and entered, the Final Decree herein of February 5th was stayed by an appeal, and that such was a good and sufficient cause for the failure of the said Stipulators to perform the terms and conditions of their Stipulation.

BRIEF OF THE ARGUMENT.

I.

INEVITABLE ACCIDENT.

(1) The vessel was lying at Moran's wharf in the Southerly part of the Harbor of Seattle, and the purpose of the Master was to steam across the Harbor in a Northerly direction to Schwabacher's wharf, make a landing, finish freighting his ship, and put to sea.

Record: Higgins 274-5.

(2) Accordingly the vessel proceeded slowly and carefully across the Harbor—pursuing a lawful purpose in a lawful manner.

Record: Higgins 275, 298; McCarty 309-10, 312-14; Fritch 345-6.

(3) It was not the purpose of the Master to go in on the South side of Schwabacher's wharf or anywhere near the Brigantine "Blakeley" moored close up against the South side of the wharf and in some distance towards the shore, but to land at the end of the wharf by approaching it from the South and running along the end to the landing place.

Record: Higgins 276.

(4) When the vessel came somewhat in line with the end of the wharf, where it was intended to land, the Master noticed the bowsprit of the "Hatton Hall, on the North side of the wharf projecting well out beyond the end of the wharf, and which he would strike if his ves-

sel went too far in making the landing. *This bowsprit projecting out from the North side of the wharf was the only obstruction in the course the vessel was pursuing and intended to pursue to make the landing, and was the only thing from which any danger could be apprehended, and the only thing the Master could be reasonably required to look out for and avoid;* the "Blakeley" was stationary and at a safe distance to starboard and entirely out of the course the vessel was pursuing and intended to pursue, and the Master could not be reasonably required to consider that vessel at all; and so with the wharf—the course the vessel was pursuing and intended to pursue was along the end of the wharf and no change of course or check in speed was necessary to avoid a collision with the wharf. Under these circumstances, all the Master had to do to berth his vessel, was to check her speed so as to stop at the end of the wharf before coming in contact with the bowsprit projecting across his course from the North side of the wharf. The signals and commands given by the Master to accomplish this purpose was proper, were timely given and would have been effectual had not a latent defect in the bell signal apparatus prevented the sounding of certain of his signals in the engine-room, thereby producing from the engines an effect entirely different from what the signals given called for, and before it was possible to detect the failure and counteract or overcome it, the vessel was suddenly and sharply and unalterably swerved from her course to the one she pursued to the collision with the "Blakeley," on the South side of the wharf.

Record: Higgins 276, 293, 304.

(5) After getting nearer in line with the end of the wharf, where it was intended to land, and seeing the bowsprit projecting out from the North side of the wharf directly across his course, *it was the purpose of the Master to stop his ship before reaching the landing place and get perfect control of her*, then move slowly to the landing and avoid the possibility of striking the bowsprit—the only obstruction in his course. *To accomplish this purpose*, when within easy distance and in ample time—the port engine then going forward under slow bells and the starboard engine stationary—the Master from the bridge abaft the pilot house, pulled the port engine bell cord once, to stop the port engine, then twice, to back the port engine full speed; then pulled the starboard engine bell cord twice, to back the starboard engine full speed. *All three signals to stop and back the port engine and to back the starboard engine were given as and constituted one compound signal, to effect one purpose—the stopping of the ship by backing both engines full speed—and were naturally given in as quick succession as possible.*

Record: Higgins 275-7, 296-7, 303-4, 372-4, 388-9; McCarty 308-10; Gilbertson 315-16; Bryant 229, 230, 242-3; Newhall 259-262.

(6) The signal given to back the starboard engine was sounded in the engine-room as given and that engine immediately commenced backing at full speed. Neither of the signals given to the port engine were sounded in the engine-room and that engine consequently continued its forward propulsion.

Record: McCarty 308-11.

(7) In giving these bell signals—*not any particular one*, but all of them—the Master detected or rather suspected that there was something wrong, he detected something unnatural in the working of the bell pulls, and there did not appear to be a proper resound. He heard signals sounded in the engine-room, but not all that he thought he should have heard, and *he thought he noticed* a slight swinging of the ship to starboard, which he knew should not have occurred, had all of his signals been sounded in the engine-room and acted upon. Yet he could not at the instant detect that *any particular signal* had not been sounded. The signals thus given were proper and necessary to accomplish the desired purpose, and the only signals that could effect such purpose, and fearing and suspecting that some of them may not have been sounded or been acted upon, and without waiting to ascertain what the trouble was, he immediately stepped to the ventilator, a few steps in the rear, *the next best and most effective means of communicating with the engine-room*, and repeated the whole compound signal by hollowing down the ventilator to the engineer to back both engines. The starboard engine was then backed full speed, and the port engine was immediately reversed and backed in like manner, and both so continued until after the collision.

Record: Higgins 277-8, 280, 289-295, 373-6, 386-391, 397-9; McCarty 308-10, 313-14; Bryant 229, 230.

(8) Although the time intervening between the giving of these bell signals and their repetition by the command given through the ventilator to back both engines

was *scarcely long enough to be estimated*, yet the sudden and violent swerving force to starboard, caused by the port engine going forward and the starboard engine backing full speed, was such that the vessel was, in that short time, swung so far from her course to starboard and in towards the wharf and the "Blakeley," lying close against the south side of the wharf and well in towards the shore, that it was impossible to change her course to port and avoid a collision with the wharf or Brigantine. The Master then, *as the only thing that could be done*, ordered the wheel "hard aport," *hoping and believing* he could swing the vessel far enough to starboard to avoid both the wharf and the Brigantine and make the open water beyond. The vessel proceeded thus—both engines backing full speed and wheel "hard aport"—and so *nearly* accomplished the purpose of the Master that the Brigantine was struck only a glancing blow forward the fore-rigging and slightly damaged.

Record: Higgins 278-280, 290-4, 298-9, 372-5, 388-394, 398-9; McCarty 313-14; Gilbertson 315-17; Newhall 262-4.

(9) The three bell signals, given to effect the stopping of the ship before reaching the wharf by backing both engines full speed, were the proper signals to be given under the circumstances, and were timely and properly given, and were all that skillful seamanship required. This is fully established by the evidence, and there is no evidence to the contrary.

Record: Bryant 231-2, 242-3; Higgins 277-8, 292-3, 303-5, 372-4, 390-1; Newhall 248-262.

(10) It is fully established by the evidence that all these bell signals were given in ample time and at proper distance from the wharf to stop the vessel before reaching the wharf, had all the signals as given been sounded in the engine-room. The substance of Capt. Bryant's testimony is, that the Master was at fault in not giving the bell signals in time and sufficient distance from the wharf. He bases this conclusion upon the idea that the ship is of light power, and testifies that if she had been of heavy power, the signals were properly given. It is shown by the evidence that the vessel was of heavy power, and that the signals were given in ample time to stop the ship before reaching the wharf. *The Honorable District Judge finds no fault with the Master in this particular.*

Record: Bryant 231-3, 236-7, 242-3; Fritch 356-7; Spiers 427; Jessen 429, 430; Higgins 303-5, 372-4, 390-1.

(11) The bell-signal-method or manner of communication between the bridge and the engine-room in the navigation of steamships is, and has been from the time of their construction, *the universal method and system in use; all other methods and means are mere substitutes.* Masters rely upon this method and means of communicating their commands in the navigation of their ships. *All the maritime law requires of them, in using this means of communication, is the exercise of reasonable care, prudence and skill in testing the condition and effectiveness of the apparatus, and in resorting to it in time to effect the desired purpose; and, upon its failure, to re-*

sort with all reasonable diligence to the next best method or means for accomplishing the desired purpose.

(12) The command given through the ventilator to back the engines was actually given and acted upon in ample time to have stopped the vessel before reaching the landing intended to be made, had not the counteraction of the engines, caused by the failure of the bell signals, swerved the vessel from her course so that the course the vessel was pursuing at the time the bell signals were given, and which it was intended she should pursue, could not be followed. This not only establishes due diligence on the part of the Master, in resorting to the next best means of communication, after the failure of his bell signals, but also that the bell signals were given in ample time and distance from the wharf. It also evinces the skillful seamaanship required to meet the difficulty which suddenly arose.

Record: Higgins 278, 290, 294, 305, 375-6, 388-391, 397-9; McCarty 308-10; Newhall 261-3; Bryant 229, 230, 242-3.

(13) The Honorable District Judge made his first and, we think, vital error in treating these bell signals, to stop the port engine and back both engines, as *independent signals, each having an independent purpose which the Master was required to see was accomplished before proceeding with the others*; and bases upon this error the first fault he finds the Master guilty of, namely, "in signalling the engineer to back the starboard engine without first actually knowing that his intended orders to back and reverse the port engine had been

executed by the engineer.” (Opinion—Record p. 440). He overlooks the fact that the signals were given to effect *one purpose—the stopping of the vessel by backing both engines—and were given as one compound signal for that purpose and were necessarily and properly given in as quick succession as possible*. Besides, there is *not a particle of evidence* that they were not the proper signals, or that they were improperly given. On the other hand, the testimony of the Master and even of Libellant’s expert witnesses is, that the bell signals were proper and were properly given.

See Sub. Divs. 5, 9, 10 Ante 22 post of this Division of the Argument.

(14) The finding of the Honorable District Judge (Opinion—Record p. 434), that the Master deliberately signaled the starboard engine to back, after noticing in his own mind that his signal to reverse the port engine had not been sounded in the engine-room, is wholly contrary to the testimony of the Master (and it is all the testimony there is on this point).

See Sub. Divs. 4 and 5 Ante of this Division of the Argument.

(15) The error of the Honorable District Judge commenced in finding as a fact that the Master, after pulling the handle once to stop the port engine, “for the first time noticed the bowsprit of the “Hatton Hall” projecting beyond the end of the dock, and the discovery seems to have attracted his attention so that he probably did not notice the gong did not sound in response to his pull.” (Opinion—Record p. 434.) There

is no evidence for this finding. The testimony of the Master, which is uncontroverted, is, that when the ship was about 50 feet East and 200 feet South of Schwabacher's wharf, he first noticed the bowsprit of the "Hutton Hall" projecting from the North side of the wharf, and then, *after seeing the bowsprit and because it was in the position he saw it, and to avoid a possible collision with it*, he gave all three of the bell signals. There is no warrant in the evidence whatever for finding that the bowsprit distracted the Master's attention and prevented his noticing whether or not there was a resound from the pull to stop the port engine.

Record: Higgins 276.

(16) The Honorable District Judge again errs in a material particular when he finds that the port engine was not reversed until the Master hollowed down the ventilator the second and last time. (Opinion Record p. 435.) The testimony of the Master and Engineer is that the port engine was reversed the first time the Master hollowed down the ventilator, and both engines thereafter continued to back full speed until after the collision.

Record: Higgins 278; McCarty 308-10.

(17) The Honorable District Judge again errs in finding that the bent printle could have been discovered "by a person of competent skill and judgment, if he acted with a degree of care and vigilance amounting to ordinary care and prudence in view of all the circumstances." (Opinion—Record p. 439.) There is no evidence to support this finding, and it is contrary to the

evidence. The testimony of the Master and engineer is, that *the bells were properly, thoroughly and practically tested* at Moran's wharf upon the vessel starting out *only half hour before the collision occurred*, and that they worked properly, responded promptly and accurately, and were apparently in perfect order and condition. We submit that they did all that was required of the Master and engineer by the maritime law, to test the condition and effectiveness of the apparatus to entitle its use and reliance upon it. The reasoning of the Court (Opinion—Supra), that the Master should have detected the trouble from the action or nonaction of the bell wire in his grasp, is mere speculation and is not justified by the evidence. The testimony of the Master is, that the bell wires used were new and worked hard—the bell pulls are shown by the evidence to be worked by upward movement and, upon being released, naturally fall to their original position—in pulling the handles, knowing there is a recoil, the hand would naturally, in anticipation of the same, recede to the original position and might or might not feel the effect of the recoil. Besides, *there is not a particle of evidence that the printle actually hung and prevented a recoil except the last time it was used.* For all the evidence discloses upon this point, the printle may have worked the full length every pull, but sufficiently hard, on account of its bent condition, to prevent the sounding of the gong, and this was probably the case, as the *Master testifies that the bell pulls went back each time.* Under any of these conditions the Master might not, though exercising reasonable care, prudence and skill, have detected

the situation of affairs. He is shown to have been for many years a tried and experienced ship master, and testifies that, while he detected something unusual in the bell pulls yet he could not locate the trouble and attributed it somewhat to the newness of the bell pulls used, and *did not, in fact, detect any absence of the recoil.*

Record: Higgins 280-1, 294, 336-7, 379-382, 387-9, 397-8; McCarty 308-13.

(18) Another error made by the Honorable District Judge, and upon which he bases the second fault he charges the Master with, namely, "in not giving attention to the helm, which is the means provided for controlling the course of a ship under way." (Opinion—Record p. 440). This is mere *speculation* and is not justified by the evidence. *There is not a particle of evidence that the Master could have used the helm for the purpose stated.* Libellant's expert witnesses, the Local Inspector of Hulls and Boilers, Capt. Bryant, and Capt. Newhall, a Master Mariner, and who showed no hesitation in criticising the Master where they thought he was at fault, do not even suggest, much less testify, that the Master could have overcome the counter-action of the engines, under the conditions that existed, by the use of the helm. *On the other hand, the testimony of the Master is, that the swerving of the ship to starboard was so sudden, violent and unexpected that there was no time to use the helm, to throw the ship to starboard, after detecting the necessity for such use, and that it could not be used for that purpose or for any other purpose than to port the wheel and attempt to swing the ship farther*

to starboard to avoid a collision, if possible, with the wharf and the Brigantine, and this the evidence shows the Master promptly did—showing that he was well aware of the presence of the helm and its utility in navigation.

Record: Higgins 278, 290, 298, 304, 398-9; Gilbertson 315-16.

(19) The testimony of the Master is, that, when he hollowed down the ventilator the first time, it was *more a precaution against what he feared or suspected to be wrong than to correct what he knew to be wrong*. There is no evidence that there was any apparent necessity for the use of the helm. A little swerving of the ship to starboard (and the swerving must have been slight at first) did not imperatively require the use of the helm, for the ship was then about 200 feet from the wharf and about 50 feet out of line with the end of the wharf, along which the landing was to be made, and the *Master was wholly unaware of the violent swerving force at work*. Besides, the Master says, before hollowing down the ventilator, *he did not know that the ship was swerving to starboard, but thought he noticed such a swerving*. His first duty was to correct what he believed was wrong. This he did, and, after that, it was too late to use the helm other than as he did; at any rate, the worst that could be made of his failure to use the helm to overcome the counter-action of the engines would be "*error in extremis*," for which he should not be held in fault.

Record: Higgins 290-1, 298.

Spencer on Marine Collisions, Sec. 196.

The Clytie, Fed. Case No. 2913.

The Maurice B. Grover, 92 Fed. 678.

(20) *The primary and sole cause of the failure of the bell signals, given to stop and back the port engine, to sound in the engine-room, was a latent defect in the bell signal apparatus.* The "printle," a tube passing through and attached to the deck and extending about six inches above, through which the bell-wire passes, to prevent leakage where the bell-wire passes through the deck, had become bent, so that the "cover," a larger tube attached to the bell-wire working over the "printle," upon the bell-wire being pulled to signal the port engine to stop, or was so obstructed that the gong in the engine-room was prevented from sounding; and upon the second pull of that bell wire, to signal the port engine to back, the "cover" hung on the "printle" and again prevented the gong in the engine-room from sounding, and after the collision this "cover" was found hung in this manner.

Record: Higgins 279, 283-7, 290, 295-6, 299-302, 337-8, 340-2.

(21) *This latent defect in the bell signal apparatus was the primary cause of the condition of the port engine going forward while the starboard engine was backing full speed, which resulted naturally and inevitably in the vessel being swerved suddenly to starboard and on the course from which she could not be turned, and which she pursued to the collision with the "Blakeley."* This latent defect was thus the primary and proximate cause of the collision—*it set in motion a powerful*

and dangerous force, which rendered the vessel unmanageable and drove it on to the collision.

See Authentic Sub. Divs. 32, 33, 34, 38 and 39 post of this Division of the Argument.

(22) All the signals and commands given by the Master from leaving Moran's wharf until after the collision were each and all the proper signals and commands to be given under the circumstances and all that skillful seamanship required. This is even the testimony of Libellant's experts.

Record: Bryant 230-4, 237-8; Newhall 259-265.

(23) The ship was properly equipped (particularly as to means of communication between bridge and engine-room) in the manner usual and customary with vessels of her class.

Record: Higgins 280-3, 286-8, 330-2, 336-9, 340-2, 375-380; McCarty 306-8; Fritch 343-8; Dehm 403-4; Bryant 225-7; Newhall 247-9; Spiers 425-7; Jessen 428-430.

(24) The bell-wires were, a few days prior to the accident, by direction of the United States Inspectors at Seattle, extended back to the bridge aft the pilot house, that the Master might stand there in a more advantageous position in navigating his ship.

Record: Higgins 281; McCarty 312-13; Fritch 343-5; Dehm 403-4; Bryant 227-8.

(25) The ship had been regularly inspected and approved by the United States Inspectors, the last time at Seattle about six days prior to the collision.

Record: Higgins 282, 294; Fritch 344-5; Bryant 225-7.

See the "Virgo"—post

(26) The Master and engineer were competent, experienced and skillful officers and were in their proper places.

Record: Higgins 274, 289, 290; McCarty 305-6; Gilbertson 314-16; Fritch 345-9.

(27) The position occupied by the Master—the bridge aft the pilot house—was where the United States Inspector at Seattle, only a few days before, had provided for him to stand in navigating his ship, and the position was a proper one and from which the Master could see and hear and communicate with the engineer in the engine-room, both by bell and sound, better than from the bridge in front of the pilot house.

Record: Higgins 289, 290, 330-2, 336-8, 340-1, 373-6, 386-7; Gilbertson 315-16; Dehm 404; Bryant 218, 228-9; Newhall 248, 267.

(28) The use of the port engine alone was proper under the circumstances.

Record: Higgins 275, 372-3, 382-5, 395-7.

(29) The criticism of the use of the port engine alone was solely that they would have used the other engine.

Record: Newhall 268-273.

(30) The testimony of Capt. Bryant shows there may be just a little feeling on the part of the witness against the ship. The statement that the Master and

engineer were green men was wholly gratuitous and is shown by the testimony in the case to be untrue. The statement that the Master had no business to get his ship in where he did is of like character and, in addition, frivolous, and simply shows a desire to criticise.

Record: Bryant 225, 231-4, Higgins 274, McCarty 305-6, Fritch 345-9.

(31) The collision thus resulted from an inevitable and unavoidable accident, and if Libellant received any injury resulting therefrom, neither the vessel nor her owner is liable therefor, and "the loss must rest where it falls."

(32) "Inevitable accident is, where a vessel, in pursuing a lawful avocation in a lawful manner, using the proper precautions against danger, and an accident occurs. The highest degree of caution that can be used is not required. It is enough that it is reasonable under the circumstances, such as is usual in similar cases, and has been found by long experience to be sufficient to answer the end in view, the safety of life and property."

Henry's Adm. Jur. and Pro. (1 Ed.) Sec. 85.

The "Europa" 2 Eng. L. and Eq. R. 557 (560).

The Austria, 14 Fed. 298.

Desty—Shipping and Admiralty (1 Ed.) Sec. 384.

The Grace Girdler, 7 Wall. 196.

The Morning Star, 2 Wall. 550.

The Union S. S. Co. vs. The New York and U.

S. S. Co., 24 How. 307.

The Lady Pike, 2 Biss. 141.

Spencer on Marine Collisions, Sec. 195.

(33) "The term "inevitable accident" is not therefore to be confounded with *vis major*. In the absence of proof of ordinary proper care and caution, an accident comes into the former category, although, if every possible contingency had been foreseen, it might have been guarded against." It may occur in the entire absence of *vis major* and the like.

Henry's Adm. Jur. and Pro. (1 Ed.) Sec. 85.

Desty—Shipping and Admiralty (1 Ed.) Sec. 384.

The Java, 14 Wall. 189.

(34) To establish the defense of inevitable accident, it is not necessary to show measures of precaution, "Which, perhaps, an over-prudent man would take" to guard against possible danger, but "It is required to use such precautions as are usual to prevent danger" only.

Henry's Adm. Jur. and Pro. (1 Ed.) Sec. 85.

The "William Lindsay" 5 L. R. P. C. 338; 2

M. L. Cas. N. S. 118.

Desty—Shipping and Admiralty (1 Ed.) Sec. 384.

The Java, 14 Wall. 189.

The Brooklyn, Fed. Case No. 1939; 4 Blatch. 365.

The France, 59 Fed. 479.

The Ohio, 91 Fed. 547.

(35) "In the exercise of care and diligence no unreasonable duty is required. The law makes no unreasonable demands; it does not require from any man superhuman wisdom or foresight. Therefore, no one is guilty of negligence by reason of failing to take pre-

cautions which no other man would be likely to take under the same circumstances. If one uses every precaution which the most prudent man would use under the circumstances, he is not held responsible for omitting other precautions which are conceivable, even though, if he had used them, the injury would certainly have been avoided. If he uses all the skill and diligence which can be attained by reasonable means, he is not responsible for failure."

1 Shear. & Red. on Neg. Sec. 11.

(36) In the case of the "Europa" (2 Eng. L. & Eq. R. 557, 560), which grew out of a collision, Dr. Lushington, instructing the Trinity Masters, said:

"There is another distinction taken which is applicable to this case: 'But it should be observed, that the caution which the law requires is not the utmost precaution that can be used.' The law is not so extravagant as to require that a man should possess that mind, and firmness of purpose, as always to do what is right to the very letter. If it were so, it is obvious that the demands of the law would be seldom satisfied. It is sufficient that a reasonable precaution be taken, such as is usual and ordinary in similar cases, such as has been found, by long experience, in the ordinary course of things, to answer the end, the end being the safety of life and property."

(37) In the Nitro Glycerine case (15 Wall. 524) the Court held, that "the reasonable care which one must take to avoid responsibility, is that which a person of ordinary prudence and caution would use if his own in-

terests were to be affected, and the whole risk were his own."

(38) "Where the vessel is constructed and equipped in the mode usual and customary with other vessels of like character and in a mode approved by competent judges and previous experience, then, in case of an accident happening by reason of a latent defect in the equipment and construction, there is no negligence on the part of the owner." (Sylabus).

The Lizzie Frank, 31 Fed. 477.

The Flower Gate, 31 Fed. 762.

Spencer on Marine Collisions, Sec. 179.

(39) *An accident, caused by a latent defect in the machinery or apparatus for navigation of a vessel, and which was not and could not be discovered by exercising reasonable care and caution, is an inevitable accident.*

The "William Lindsay," Supra.

The "Virgo" 35 L. T. N. S. 519; 3 M. L. Cas.

285.

The Olympia, 52 Fed. 985; 61 Fed. 120.

The Lizzie Frank, 31 Fed. 477.

The Flower Gate, 31 Fed. 762.

The Rheola, 7 Fed. 781.

The Riverdale, 53 Fed. 286.

The Transfer No. 3, 91 Fed. 803.

The M. R. Brazos, Fed. Case No. 9898; 10 Ben.

435.

II.

LIBELLANT'S SUBSEQUENT ACTS PROXIMATE CAUSE OF
THE INJURY.

(1) The *proximate cause* of whatever injury the Libellant received was *his own subsequent, voluntary and deliberate acts, recklessly exposing himself* to the dangers of the collision for the purpose of recovering property of trifling value belonging to him, and he must be held to have *assumed the risk of the same*.

(2) Libellant's very first witness testifies that, at the first jar of the collision, he came on deck and saw Libellant running in the direction of the collision, to catch his coat or some tools.

Record: Swan 77-80.

(3) Another witness for Libellant, who was standing by and talking to him at the time of the collision, testifies that he saw the "Homer" coming and that, as he jumped past Libellant, he hollered to him to "look out," and as he jumped by Libellant, saw him "stop and start" in the direction he was going (away from the scene of the collision) and then "turn," and that, when he got to the galley door, he heard Libellant say he was hurt, and looked round and saw him falling against the main rigging only a few feet from where he had been standing.

Record: Waldron 90-9; Libellant 128-9.

(4) Libellant admits that, after receiving warning of the danger, he got his coat before running, because

it had a check in it for \$234.00, which he did not want to lose.

Record: Libellant 121-2, 128-130, 141-2.

(5) Even though the Libellant only stopped to pick up his coat lying by the side of him, as he testifies, the thought and movement necessary to recover it consumed time enough, had it been spent in running, as he did after getting his coat, would certainly have placed him far beyond where he was when he says he was hit.

(6) Libellant is mistaken about his coat being right at his feet and that his flight was not retarded by recovering it. The two men with Libellant, Waldron and Anderson, were both nearer the scene of the collision than Libellant (Record: Waldron 97-9; Anderson 200-3), and both testify that they ran by Libellant (Record: Anderson 200-1), Waldron warning him to "look out," as he jumped by him, and testifies that he saw Libellant start in the direction he, Waldron, was running and then "turn." *Libellant admits that he saw the "Homer" coming and the man hollowing down the ventilator (which was certainly a considerable time before the collision), and appreciating there was great danger, grabbed his coat and ran* (Record; 121-2, 128-130, 141-2). The other two men testify, their first warning of the collision was just as the boats were about to strike (Record: Waldron 90, 95-7; Anderson 201-3). So, evidently, *the Libellant had due warning, as early or earlier than the other two men* (Record: 127-8), and that they all three started in the same direction and about the same

time (Record: Anderson 202-4); at any rate, that the Libellant started close on the heels of the other two men. *Then why did Waldron and Anderson get clear out of harm's way, while the Libellant was still within a few feet (Record: 128-9) of where Waldron testifies he saw him start in the direction he was running, and "turn?"* The Honorable District Judge thinks it was because the "Libellant was not so nimble in getting out of the way, when surprised by imminent danger, as the other persons who were near him at the time," and that he "failed to save himself by the extreme swiftness or extraordinary skill of his movements." The evidence does not support either proposition. There seems to us but one conclusion — *Liabellant's coat was farther away and towards the collision, and it took him longer to recover it than he seems to think it did.* This conclusion is established by the testimony of the Libellant and his own witnesses—he must have started to run with Waldron and Anderson and in the same direction, as Waldron testifies, and then "turned," as Waldron testifies, and then as Swan testifies, ran in the direction of the "Homer," to get his coat or tools. All this took time, and must have taken considerable time. *Libellant admits that, while he was facing towards the "Homer," after receiving warning from the man with him, this man got clear away and was out of sight when he turned from the "Homer" to run away. (Record: p. 127).* The Honorable District Judge seems to think he may have been delayed on this account one or two seconds. *Any delay in getting away from a collision, unless excusable is unreasonable and fatal to recover.*

(7) The testimony of Libellant is, that he was running away from the scene of danger at the time he was hit—*doing just the proper thing then—and had he done that at first*, as the other two men did and escaped uninjured, *instead of stopping and running back to recover his coat with a check in it, he would have been beyond all question far beyond the point at which he says he was at the time whatever hit him came down*, and would have escaped the injuries he received.

Record: Newman 121-2.

(8) Had the Libellant become frustrated by the imminent danger, and his delay in getting out of the way had been in any manner or measure attributed to that, a very different case would be presented, but there is no contention that such was the case. The reference in the decision to Libellant's being surprised by imminent danger and to error in *ex tremis* is wholly unsupported by evidence. The Libellant's own testimony shows coolness, thought and deliberation in the midst of the dangers surrounding him—he saw the "Homer" coming and the man hollowing down the ventilator, and knew there would be a collision, appreciated the danger of it, and started to flee from it; he then thought of the bank check for \$234.00 in his coat pocket, and he did not want to lose it, and while other men, similarly situated as he, were running for their lives, after warning him, he coolly and deliberately stopped, turned and ran back towards the collision to get his coat and check, and when they were recovered, followed the other men, as he had started to do before.

(9) Again, had the Libellant thus delayed and exposed himself to the dangers of the collision for the purpose of saving human life or even recovering property of great value to him and likely to be destroyed and lost in the collision, a different case from the one at bar would be presented, as he might be excusable for the same; but this exposure to the dangers of the collision was for the sole and admitted purpose of recovering his coat and a bank check for \$234.00, all of which, if lost, could have been replaced at a small expense.

Record: Newman 141-2.

(10) *The Libellant took the risk* of the delay and exposure, to recover his coat and check, deliberately and of his own accord and after it was certainly beyond the power of the respondent or any of her officers to prevent what was then happening and was about to happen, or in any manner to shield, protect or prevent him; and he *should be compelled to assume the risk he took* and, with it, all the consequences, whatever they may be.

(11) The criticism of the Honorable District Judge of the Master, for failure to give warning through the whistle (Opinion—Record p. 435), is not justified by the evidence. The testimony of the Master fully and satisfactorily explains why the whistle was not used. Besides, the Libellant admits that he received warning of the approach of the “Homer” before the collision took place—that he saw the Master hollowing down the ventilator and knew what was coming. We submit this was sufficient warning. The testimony shows the

Libellant did not heed the warning he received, but even tarried and even went nearer to the scene of the collision, while it was imminent and occurring. We submit there is no ground for assuming that the whistle would have been greater warning than Libellant admits he received, or that he would have heeded it any more.

Record: Higgins 371-2, 393-5, 399-402; Newman 121-2, 128-130, 141-2.

(12) It was the duty of Libellant, upon receiving warning of danger, to do all in his power to get away from it, and when he voluntarily and deliberately tarried in a position of danger and even went nearer to the scene of the collision, recklessly exposing himself to greater danger, while it was imminent and even occurring, for the purpose of recovering his coat and check, then he assumed the risk he took, and if it is shown that, but for such subsequent acts on his part, the injury would not have been received, then such acts are the proximate cause of the injury and he cannot recover, whether the collision was brought about by the negligence of respondent or not.

Buswell on Personal Injuries (2d Ed.) Sec. 143.

Fraser v. South & N. A. R. Co., 1 So. 85.

7 American & Eng. Enc. of Law (2nd Ed.) 386, 387, 392.

Deville v. S. P. R. R. Co., 50 Calif. 383.

Cook v. Johnson, 58 Mich. 437.

Lake Shore & M. S. R. R. Co. v. Bangs, 47 Mich. 470.

Harris v. Township, 8 Am. St. Rep. 842.

- Pike v. Grand Trunk, etc.*, 39 *Fed.* 255.
Sherman & Red. on Negligence (5th Ed.), Sec.
 85, 87, 101.
Desty on Shipping & Admiralty, Sec. 386.
The Lizzie Frank, 31 *Fed.* 477.
Irvin v. Spriggs, 6 *Gill (Md.)* 200, 46 *Am Dec.*
 669.
Beach on Contributory Neg. Sec 24-34, 57.
Holmes v. Southern Pac. etc., 31 *Pac.* 834.
Spencer on Marine Collisions, Sec. 188.
Sullivan v. Dunham, 41 *N. Y. Sup.* 1083.
Morris v. Lake Shore, etc., 42 *N. E. Rep.* 579.
Eckert v. The Long Island, etc., 43 *N. Y.* 502.
Goldstine v. The Chicago, etc., 46 *Wisc.* 404.
Berg v. Great Northern, etc., 73 *N. Y. Sup.* 91.
Warton on Negligence (1st Ed.), Sec. 300.

(13) After finding that the Master was in fault in the navigation of his ship, the Honorable District Judge further erred in not finding that these acts of the Libellant were acts of negligence on his part and the proximate cause of the injuries he alleges to have received, and precluded his recovery.

- Spencer on Marine Collisions*, Sec. 187.
The Carl, etc., 18 *Fed.* 655.
The Explorer, 20 *Fed.* 135.
The Wanderer, 20 *Fed.* 141.
The E. B. Ward, Jr., 20 *Fed.* 702.
Sunny v. Holt, 15 *Fed.* 880.

(14) And again, after finding that the Master was in fault in the navigation of his ship and that these acts

of the Libellant were not such as to preclude his recovery for the injuries he alleges to have received, the Honorable District Judge still further erred in not holding that these acts of Libellant required at least a division of the damages which the evidence may establish the Libellant received.

Spencer on Marine Collisions, Sec. 191.

The Max Morris, 24 Fed. 860; 28 Fed. 881; 137 U. S. 1.

The Mystic, 44 Fed. 398.

Olson v. Flavel, 34 Fed. 477.

III.

COLLISION NOT THE PROXIMATE CAUSE OF THE INJURY.

(1) It is a mere supposition on the part of the Libellant and his witnesses that he was hit by the "block." Neither he nor any of his witnesses saw anything hit him, or know what hit him.

Record: Swan 77-80; Gray 81-2; 87-8; Waldron 92; Brown 101-2; Dodge 106-7; Roberts 114; Newman (Libellant) 121-3, 131-3; Anderson 200-1, 204-9.

(2) The evidence does not support the finding of the Honorable District Judge, that there is a preponderance of evidence that the "block" struck the Libellant and caused the injury. A number of witnesses testify that they saw the "block," or a "block," lying on the deck of the "Blakeley" near where the Libellant was hurt. "Blocks" are very common things about a ship, and the Honorable District Judge seems to think there was more than one lying around in this instance.

These witnesses are as liable as the man at the wheel of the "Homer" to get the blocks mixed. We submit this is far short of proof sufficient to establish that the "block" struck the Libellant, and far short of the proof he should be required to make, considering the relative situation of the parties, to entitle him to a judgment for "substantial damages." None of these witnesses even saw the "block" strike anywhere, much less strike the Libellant. On the other hand, the helmsman on the "Homer" testifies that he saw the "block" strike on the deck of the "Homer" and rest there. There is no ground for finding that he referred to some other "block," for the "block" in question is identified by him. This is positive and direct testimony that the "block" in question did not strike the Libellant (which is Libellant's theory of the injury), against a mere inference on the other hand that the "block" did strike the Libellant, from the fact that a block was found lying near him after he was injured.

Record: Gilbertson 317-327.

(3) The injury complained of, to whatever extent it may be, was received upon the deck of the "Blakeley," and necessarily the Master and crew and those on board at the time are the only witnesses to the accident. The Master and crew of the "Blakeley" are of course keenly interested in shielding the "Blakeley" from any fault or liability, and all of them are shown to be friendly to the Libellant and testify in his behalf whether they know anything or not. This gives the Libellant an immense advantage over the respondent. This unequal-

ity should require of Libellant positive proof that the primary cause of the injury was some force or violence negligently or carelessly put in motion by the respondent.

(4) That the proximate cause of the injury was any force or violence caused by the collision is a mere matter of speculation on the part of Libellant and his witnesses. The Libellant may have been hit by innumerable parts of the tackle of the "Blakeley" or materials for her repair, carelessly or negligently suspended or attached, lying at the wharf undergoing repairs as she was, and which any slight jar might have dislodged. Such a thing is not at all inconsistent with the testimony of the Libellant and his witnesses, save their conclusions from mere supposition.

IV.

EXTENT AND PERMANENCY OF LIBELLANT'S INJURIES.

(1) The Honorable District Judge erred in finding that Libellant was permanently disabled (Opinion—Record p. 436, 442), and awarding damages upon that basis. Such a finding and award is not supported by the evidence.

(2) The testimony of Libellants own surgeons upon the question of the extent and permanency of his injuries is as follows:

DR. MILLER—(Record: 169-170).

"Q. I will ask you to state whether or not they are likely to be permanent?

A. It is more than *probable* that they will be permanent, although there is a *possibility*—a *bare possibil-*

ity of his regaining more or less of the use of the limbs, but it is a question if he will ever be able to walk."

"Q. I will ask you if you can state the extent of the injury to his spinal column or the lower lumbar vertebra?

A. The clinical conditions which I observed *would indicate* that the branches that emerge from the lower portion of the spinal cord are crushed.

Q. That is, the nerves extending out from the lower end of the spinal cord?

A. Yes.

Q. In case that is the manner in which he is injured, is there any likelihood, even, of his ever having the use of his lower limbs?

Objected to * * *

A. It is *barely possible*, but not *probable*."

DR. WOTHERSPOON—(Record: 188).

"Q. I will ask you whether or not, in your opinion, he will ever be able to use the limbs so as to get around and follow his previous occupation of ship carpenter?

A. *He might recover. He may be able to use his limbs yet. That is a question that I could not answer very definitely.*

Q. Well, about what would be the chances?

A. *I could not even estimate the chances because I do not know the amount of injury to the nerves or spinal cord.*"

We submit this is not sufficient proof of permanent disability to justify awarding damages on that basis.

(3) Libellant's surgeons both testify that, up to the time of giving their testimony—from April 26th to

August 2nd—they had resorted only to simple remedies and methods to determine the extent and nature of and to treat Libellant's injuries—trusting more to nature than to scientific surgical treatment. *Neither of them had then determined what was the matter with the man or what treatment he required, and were simply awaiting developments. The testimony of both of them shows conclusively that the time had not then arrived when the nature, extent or permanency of the Libellant's injuries could be determined with reasonable certainty. Their testimony as to the nature, extent and permanency of the Libellant's injuries, considered in connection with this fact, makes it but conjecture—mere guess-work.*

Record: Dr. Miller 168-182; Dr. Wotherspoon 182-198.

(4) Permanent disability *certainly cannot be established* with that reasonable certainty that the law requires to justify a recovery upon that basis, *until the nature and extent of the injuries have been ascertained and a fixed and permanent condition has been developed.* Until that stage has been reached (and the testimony of the surgeons shows conclusively that it has not in the case at bar), the result is merely conjectural, supported only in the imagination.

(5) To entitle a recovery for permanent disability, it must be established with reasonable certainty that the injuries will be permanent and that permanent disability will inevitable result. The possibility or probability or likelihood of permanent disability will not support a recovery upon that basis; nor will any degree

of possibility, probability or likelihood of permanent disability, based upon mere conjecture, suffice.

White v. Milwaukee City Ry. Co., 61 *Wisc.* 536.
Cleveland C. C. & I. Ry. Co. v. Newell, 3 *N. E.*
 836 (843).

Ohio & M. Ry. Co. v. Crosby, 7 *N. E.* 373.

Frye v. The Dubuque & S. W. Ry. Co., 45 *Ia.*
 416.

Curtis v. Rochester & S. R. R. Co., 18 *N.Y.* 534.

Toges v. New York Central & H. R. R. Co., 11
N. E. 369.

Allender v. C. R. I. & P. R. R. Co., 37 *Ia.* 264.

Groundwater v. Town of Washington, 65 *N. W.*
 871.

Dawson v. City of Troy, 2 *N. Y. Supp.* 136.

Hardy v. Milwaukee, 61 *N. W.* 771.

Smith v. Milwaukee B. & T., etc., 64 *N. W.*
 1041.

Strohm v. The New York L. E. & W. R. R.
Co., 96 *N. Y.* 305.

Miley v. Broadway, etc., 8 *N. Y. Supp.* 455.

Louisville S. & R. Co. v. Minogue 14 *S.W.* 357.

(6) Claimant asked both the Proctors for Libellant and the Honorable District Judge for permission to make a surgical examination of the Libellant by reputable and skillfull surgeons of his own (Claimant's) selection, under such directions as the Court might see proper to make. The Libellant and his Proctors declined to permit such an examination, and the Honorable District Judge refused to make an order directing

it. We do not contend, in the face of the *Union Pacific Ry. Co. v. Botsford*, 141 U. S. 250, that the Honorable District Judge erred in refusing to make the order, yet the scathing criticism of the rule laid down by the majority of the Court by Justices Brewer and Brown in their dissenting opinion makes it too plain that the evils which may result from the rule should be avoided in every legitimate manner. The application to the Court for this order was not made expecting it to be granted, but for the purpose of placing Libellant and Proctors squarely and indisputably upon record—in the face of the Court—as taking advantage of the technicalities of the law to prevent the X-Rays of justice being turned on their carefully concealed network of pretenses and make them demonstrate to the Court that their claims and demands were such as could be established only in the dark—claims and demands they would not jeopardize by a full, fair and honest investigation.

(7) While the rule laid down by the majority of the Court in the *Union Pacific v. Botsford*, supra, clearly precludes the Court from enforcing a surgical examination of the Libellant, yet it does not justify the Libellant in refusing to permit such an examination, when he is attempting to establish permanent disability for recovery upon that basis by the testimony of his own attending surgeons. Nor does it preclude the Court from withholding damages for permanent disability, unless the Libellant is willing to permit and does permit a full, fair and honest investigation. Nor does it pre-

clude the Court from protecting itself and the Claimant from imposition and fraud. The error committed by the Honorable District Judge in this particular was not in refusing the order, but in considering Libellant's claim for permanent disability and awarding him damages upon that basis after it was so clearly demonstrated to the Court that a full, fair and honest investigation upon this point had been deliberately and purposely precluded by the Libellant.

The record shows that *at one time Libellant* and his Proctors seems to have consented to a surgical examination by Claimant, and they will doubtless urge that fact to relieve themselves of the embarrassment they justly labor under, in having refused to permit such an examination. There is such a thing as consenting upon the record and refusing out of the record—consenting, yet imposing conditions which amount to a refusal. That such was the case is clearly shown by the record and the fact that Claimant was compelled to apply to the Court for an order directing the examination. If the Libellant and his Proctors were as willing to accord to the Claimant as fair and full an opportunity to make a surgical examination as they would have it appear, the Claimant would not have been driven to an application to the Court for relief, and Counsel for Libellant would not have felt called upon to *oppose the application by such an elaborate affidavit as he did* (Record: 408). The record shows that *Libellant was taking his testimony from April 29th (Record: 76) to August 21st (Record: 243, 273) before he closed his case, and took tes-*

timony in chief as late as September 25th (Record: 362); yet, on September 23rd (Record: 53) they began to apply to the Court to compel the reporting of the case, and the shutting off of the Claimant. Their liberality and magnanimity is manifest not only by this record, but by the affidavit of Counsel, opposing Claimant's application for a surgical examination. A previous offer to permit a surgical examination, even though, made in good faith and unconditional, cannot justify Libellant's refusal, and particularly when the offer was made before the Claimant was prepared to take advantage of it and withdrawn as soon as he was prepared to avail himself of it. The affidavits of George Fritch (Record: 64) and J. B. Metcalfe (Record 57) clearly shows that Claimant was proceeding with all due diligence in presenting his case, and also show the necessity for the surgical examination on the part of Claimant, and that it was offered to be made and applied for as soon as its necessity could be determined, and it could be properly done.

(8) Libellant may have the technical right to refuse to submit to even such a surgical examination on the part of the Claimant, but when he does, he is estopped to say that his injuries are permanent, or other than temporary; otherwise, the door to fraud is wide open, and the Claimant is without his day in Court.

(9) If Libellant can avail himself of this privilege and then claim damages for permanent disability—if he can try his case upon such testimony as he sees fit to give to the Court and cut off all possibility of its being controverted or contradicted, then there is no reason

why permanent disability cannot be established in every case of injury.

(10) Libellant's surgeons may be reputable men and skillful in their profession, but they are *his doctors*, and they will certainly give him the benefit of every advantage and doubt and, if so disposed, and relieved from possibility of detection, can make his case whether he has one or not.

(11) Notwithstanding the testimony of Libellant's surgeons, that they could not then say what the nature or extent of the Libellant's injuries were, or what was the proper treatment to 'give him, and that they were awaiting developments and a change to take place, *the Libellant saw fit to go to trial upon this testimony more than six months after it was given.* Had there been no improvement in Libellant's condition, or if there had been a change for the worse, since the taking of the testimony, naturally the Libellant would have sought the benefit of that fact upon the trial. Therefore, his silence and seclusion should be conclusive evidence that there *has been a change*, which he desires to and which he has kept from the Court.

(12) The testimony of Dr. Wotherspoon and of the Nurse was, that *there had been an improvement* in the Libellant at the time they testified. This, taken in connection with the fact that the surgeons were by no means sure what the result would be and were *awaiting developments and expecting a change*, does not make it an unreasonable assumption that, while the Honorable District Judge was finding permanent disability and award-

ing damages therefore in the sum of \$12,000, the Libellant was making rapid strides along the highway to permanent recovery, if not then fully recovered.

Record: Dr. Wotherspoon 187; Thompson 150.

(13) The testimony of Libellant's surgeons shows that he is not receiving sufficient, if he is receiving proper surgical attention. Dr. Miller, his attending surgeon, testifies that he saw him daily from May 1st to May 15th, and after that and his removal to his West Seattle home, and up to August 2nd, the date of the giving of his testimony, he had only seen him "four or five or six times." Dr. Wotherspoon testified that he has only made three examinations, to ascertain, if possible, the nature and extent of Libellant's injuries. We submit that, from Dr. Miller's own testimony, the patient is either not receiving sufficient surgical attention, or his injuries are not so severe and serious as he would have it understood they are. Libellant has no right to neglect his injuries, conceal them from the Claimant, and then charge him with what he, Libellant, says is their result.

Record: Dr. Miller 169-170; Dr. Wotherspoon 182, 186.

City of Goshen v. England, 21 N. E. 977.

Allender v. C. R. I. & P. R. R. Co., 37 Ia. 264.

Citizens St. Ry. Co. v. Hobbs, 43 N. E. 479.

City of Waxahatchie v. Connor, 35 S. W. 692.

(14) We submit that, upon Libellant's own case, his suit was prematurely brought, if he would recover

for permanent disability. That the award of \$12,000 was made upon that basis cannot be questioned.

V.

MISCELLANEOUS.

(1) Subdivisions 1, 2, 3 and 4 of Specification of Errors, V, are fully covered in the Argument upon the preceding Specification of Errors.

(2) Admiralty Rule No. 130 of the District Court in which the case was tried is as follows:

“Where proceedings in a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days or on the first day of jurisdiction afterwards why execution should not issue against them, their lands, goods and chattels, according to their stipulation; and if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations and execution issue; but the same may be discharged on the performance of the decree and payment of all costs.”

(3) The record shows that, at the time the order was made upon the Stipulators, J. S. Goldsmith and F. M. Graham, to show cause why they should not perform the conditions of their stipulation, and the Supplemental Decree of February 19th was made against the Stipulators, the Claimant had perfected an appeal from the Final Decree of February 5th against him.

In addition to the stay of proceedings given under the above Rule of the District Court, before the entry of the Supplemental Decree the Supersedeas Bond of the Claimant on appeal in the sum fixed by the Court had been lodged with the Clerk and notice of application for its approval had been served upon the Proctors for Libellant and was approved by the Honorable District Judge at the same time he made the Supplemental Decree.

(4) We submit the record shows for the Stipulators good cause why they should not be required to perform the conditions of their stipulations, and the Honorable District Judge erred in making the Supplemental Decree of February 19th, and he had neither the right, the power nor the jurisdiction to make it. The case was then beyond his control, save only in the matters of perfecting the appeal and sending up the record.

(5) We candidly confess we did not know exactly where we stood after the entry of the Supplemental Decree of February 19th—there is no precedent for such action and none for relief from it. All proceedings were then stayed by the above Rule and, in addition, the Claimant had then perfected his appeal, yet we were confronted with another and subsequent decree purporting to modify the decree stayed by the above Rule from which an appeal had been perfected. Was the decree of February 5th against the Claimant the Final Decree, from which the appeal was properly taken? Did the appeal then taken and perfected cover the subsequent and Supplemental Decree? Or should an appeal be

taken from the two decrees after the entry of the last one? Under this complicated condition of affairs, to which we strenuously objected, we deemed the only safe course for the Claimant and his Stipulators to pursue was to perfect an appeal from the two decrees after the entry of the last, which was accordingly done; hence *the apparent double appeal shown by the record. The purpose was to bring the entire matter, beyond all question, up on appeal.* We insist now, as we did before the Honorable District Judge, that the decree of February 5th is the Final Decree, from which the appeal was properly taken and perfected by the Claimant, and that that appeal stayed all further proceedings in the District Court looking to the performance of the decree, which the Supplemental Decree certainly was in effect.

Respectfully submitted that the decree of the District Court should be reversed and the Libel dismissed.

METCALFE & JUREY and
ANDROS & FRANK,

Proctors and Appellants.

April 23rd, 1900.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

J. F. HIGGINS, Master of the Respondent
Steamer "Homer," Claimant, and J. S.
GOLDSMITH and F. M. GRAHAM, Stipu-
lators, *Appellants,*
vs.
CHARLES H. NEWMAN, *Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR
THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.
IN ADMIRALTY.

SUPPLEMENTAL BRIEF OF APPELLANTS
ON ADDITIONAL TESTIMONY TAKEN IN APPELLATE COURT

METCALFE & JUREY,
SEATTLE, WASH.
ANDROS & FRANK,
SAN FRANCISCO, CAL.
Proctors for Appellants.

FILED

LEWIS & CLARK L. & P. CO., SEATTLE, WASH.

SEP 10 1900

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ON ADDITIONAL TESTIMONY TAKEN IN APPELLATE COURT.

STATEMENT.

The theory and contention of the appellee, upon the final hearing in the District Court, was, that the evidence produced in his behalf, as to the nature and extent of his injuries, established *permanent and total*

disability. This testimony was taken some six months prior to the final hearing in the District Court and was presented by the appellee to that court as the *then true state of facts in the case* as to his past and present physical condition resulting from the injuries complained of. The District Court, upon the case presented, *found permanent and total disability*, and the decree was rendered upon that theory and basis.

In the trial below, the medical and surgical testimony on behalf of libellant was taken in August, 1899, and as late as November of that year, when a trial was being pressed by libellant, the claimant applied to both the libellant and the court for permission to have a surgical (physical) examination made of libellant, and it was denied by both, and the case thus went to trial in February following without any further information or tests.

About ten days prior to the date at which the cause was assigned for final hearing on appeal at the May term of this court at San Francisco, the appellants discovered by mere accident that such a change in the physical condition of the libellant—not only then, but even at the time of the final hearing in the District Court—had occurred, over the condition contended by the appellee to be established by the testimony, as to make it manifest that a fraud had been practiced upon the District Court and the owners of the ship, and was being attempted to be perpetuated in this court. Upon a showing by affidavits to this effect, the cause was, upon the application of appellants, continued to the

September term of this court at Seattle, and referred in the meantime to the United States commissioner of the District Court, in which the cause was tried below, to take additional testimony, as to the fact, nature and extent of the appellee's injuries and as to the truth or falsity of appellants' charges of simulation and fraud. This additional testimony has been taken and is now before the court.

We contend that it is conclusively shown by this additional testimony: that, whatever may have been the true nature and extent of the appellee's injuries at the time the testimony was taken upon which the cause was tried below, the appellee had, at the time of the final hearing in the District Court, improved to such an extent that he then certainly knew that he was not permanently or totally disabled, and that he had then substantially recovered, if he was ever seriously injured.

This additional testimony thus raises entirely new and vital questions in the case, with which it is the sole purpose of this supplemental brief to deal.

The references are to the printed record of the additional testimony taken in this court.

POINTS.

I.

That it is established by the additional testimony taken on appeal that the appellee was *not permanently or totally disabled* and had, even at the time of the trial

in the District Court, fully recovered, if seriously injured at all—and has only been simulating.

II.

That a fraud was practiced by the appellee upon the District Court and the owners of the ship, in presenting to that court, as he did, the testimony theretofore taken in his behalf, showing, as he contended, permanent and total disability, as the *then true state of facts in the case*; when he had, in fact, so greatly improved, since the taking of the testimony, that he then, at least, well knew that he was not permanently or totally disabled and had substantially recovered; and in not only thus concealing and withholding that fact from the court and the claimant, but by his own deliberate and intentional acts deprived them of the means of discovering it.

III.

That the fraud practiced by the appellee upon the District Court and the claimant was intended and attempted to be perpetuated by him in this Honorable Court, by insisting upon the affirmation of the decree of the lower court, obtained as it was, and concealing and withholding from this court and the appellants his present as well as his past physical condition, and all opportunity for investigating the same.

IV.

That the refusal of the appellee to submit to a surgical (physical) examination on the part of the appellants, on reference of the case to take additional

testimony on appeal, and his failure to cause such an examination to be made, by reputable surgeons of his own selection, upon his own account, under the circumstances of this particular case, raises a conclusive presumption that he is guilty of fraud and simulation, as charged.

V.

That whatever merit the claims of the appellee may have had (and we deny they ever had any), the fraud practiced by him through deceit and fabrication of evidence, upon the District Court, as well as the owners of the ship, in the trial below, and his intention and attempt to perpetuate the same in this court, estops him from asserting such in this or any other court, and is fatal to his recovery.

ARGUMENT.

I.

FIRST POINT.

“That it is established by the additional testimony taken on appeal that the appellee was not permanently or totally disabled and had, even at the time of the trial in the District Court, fully recovered, if seriously injured at all,—and has only been simulating.”

POPULAR FEELING FOR APPELLEE.

(1) The appellee resides at West Seattle, a small suburb of the City of Seattle, largely inhabited by

working men, and particularly those in maritime pursuits, as is the appellee. The appellee has thoroughly deceived his neighbors and the inhabitants of this little village into believing that he was made a hopeless and pitiable cripple for life by the injuries complained of, and has thus thoroughly aroused and enlisted their sympathies in his behalf, and there has been no disposition among them to disclose anything that would in any manner militate against his recovery against the representatives of the ship. This condition of affairs existed at the time of the trial in the District Court and rendered it impossible for the claimant below to obtain any information whatever as to the conditions and acts of the appellee. This same condition of affairs not only existed upon the taking of the additional testimony and had to be contended with, but, with it, a feeling of great bitterness towards the appellants and everyone who attempted to in any manner assist them. In many instances, information unguardedly disclosed was modified or positively denied when it was learned that it would be used as evidence against the appellee. (Additional testimony generally.)

POLICY AND TACTICS OF APPELLEE.

(2) The policy and tactics of the appellee have been to get upon the record a *premature and ex parte phase of his alleged injuries*. In this he exercised such undue haste that his own physicians testify that it was not then possible to determine what his injuries were or would develop into (our principal brief, pp. 38, 39, 40). Then to remain in seclusion or in disguise, except to

those upon whom he could implicitly depend, and to appear to them only to the extent that he could depend upon them; and to have this case thus heard and determined upon *only such facts as he chose to disclose and in such phase as he saw fit to present them*. He has never shown a disposition to be fair or honest towards the claimant, the appellants or the court, either in the trial below or on this appeal. He has purposely placed almost insurmountable obstacles in the way of a full and fair investigation into the facts of the case. He has purposely precluded the appellants from resorting to the primary, surest and best, if not the only true, test—a surgical (physical) examination—of the fact or character and extent of his alleged injuries, and has failed to voluntarily submit himself to such a test, except immediately after his alleged injuries and long prior to the trial of this case below. Had not dire need, staring him in the face, driven him from his lair—even then in disguise, and the merest accident discovered his maneuvers and identity, appellants would have been compelled to submit this appeal, as they were the case in the District Court, upon mere negative testimony, cross-examination of appellee's witnesses, and presumption arising from suspicious circumstances and acts. (Testimony generally.)

TANGIBLE EVIDENCE.

(3) Although appellants have been thus prevented by the direct and deliberate act of the appellee from presenting to the court primary the best and most satisfactory evidence upon the important issues raised

in this case, as to the fact, nature and extent of his injuries, yet they are now, for the first time, able to submit to the court, in the additional testimony, tangible facts and incidents so inconsistent with the claim and contention of appellee, that he was permanently and totally disabled and ever will be such and unable to perform any manual labor whatever, that the charge of simulation and fraud is established and a conclusive presumption raised that the appellee, if injured at all, has long since fully recovered. (Additional testimony generally.)

CLIMBING THE HILL—SAMUEL F. COOMBS.

(4) Judge Samuel F. Coombs, Justice of the Peace of West Seattle precinct, the home of appellee, testified that, as early as November of last year and at divers times since, he saw the appellee make repeated trips, without assistance and sometimes without crutch or cane, up and down the steep incline from the beach at West Seattle to the top of the high bluff where he resides, and gave little or no indication of disability. (21-26, 32, 33, 36-38, 40.)

(5) This testimony is met by the appellee by admitting that he did go up and down the hill, and simply denies he performed the feat at as early a date or with the ease described by Judge Coombs, and supplements this with a venomous attack upon the reputation of Judge Coombs for truth and veracity, which he places himself in the position of admitting to be false by not following it up with impeaching testimony other than the malicious attacks of himself and his wife. The

testimony of appellee's non-expert witnesses, to the effect that, in their opinion, he was unable to perform this feat, is too worthless to be considered. It is simply a question of veracity between Judge Coombs and the appellee, and this we are willing to submit upon the testimony.

CROSSING ON THE FERRY—CAPTAIN WM. J. WAITE.

(6) Captain William Waite, master of the West Seattle Ferry, testified that, at or about the time of the final hearing in the District Court and at divers times since, he saw the appellee cross the bay on his ferry-boat from his home at West Seattle to the City of Seattle proper, where his litigation was being carried on; that in these trips he was unaccompanied by anyone, and in some of them he used a cane, and in others was without crutch or cane, and gave little or no indication of disability. (53-56.)

(7) This testimony is also met by the appellee with the admission that he crossed on the ferry-boat frequently, but denies that it was at as early a date or that he got along with the ease described by Capt. Waite. The testimony of Capt. Waite is too disinterested, direct and positive to be overcome by merely the denials of the appellee and his flimsy evasions. We call the attention of the court to the unfairness and disposition of the appellee to evade and smother the damaging charges contained in Capt. Waite's testimony. (411-414). According to Capt. Waite's testimony, which stands uncontradicted save in the particular above men-

tioned, the appellee is no cripple and was not at the time of the trial in the district court.

PAINTING THE BOAT—MICHAEL KELLY.

(8) Mr. Michael Kelly, who was sent to West Seattle on April 23rd to ascertain what he could about the appellee, testified that he found the appellee at his shop and boat-house down on the beach at West Seattle, engaged in painting a boat; that from his actions, maneuvers and appearance, described by him, appellee showed no indication of being a cripple; and that the shop had every appearance of being a working shop. (5, 7, 8, 9, 10, 14, 15).

(9) The testimony of Mr. Kelley is met by appellee's admissions that he was at the boat-house as stated by Mr. Kelley (371, 372) but he positively denied that he was doing any painting whatever. The testimony of appellee's brother-in-law, Creamer, and the fisherman, John Masculin, who claim to have painted the whole of the boats and that appellee did no painting on them, is conflicting in itself. Creamer knows but little, and the testimony of the fisherman is too reckless, rambling and unreasonable to be worthy of any consideration whatever. Besides, the admission of the appellee, that he was at the boat-house *alone*, when Kelley saw him and charges him with painting the boat, completely circumvenes the testimony of Creamer and the fisherman and establishes that appellee could have then been painting the boat, as Kelley charges him, without either Creamer or the fisherman knowing anything about it. (371, 372). It is simply a question of veracity between

Kelley, a reputable, disinterested and unimpeached witness, and the appellee, deeply and keenly interested and resting under the charge of fraud and simulation. Kelley is corroborated in parts of his testimony by both the appellee and his wife and by appellee's witness, A. L. Weaver. Appellee admits that he was at his boat-house, alone, when a man like Kelley came there and asked him about Billy Gray and about his injuries on the "Blakeley." (7, 8, 371, 372). His wife testifies that Kelley called at her house and inquired for her husband, and that she told him he was down on the wharf, and that Kelley asked her if her husband had not been hurt and how he walked, whether with a cane and straight up, or slowly, and told her that he was looking for Billy Gray. (5, 6, 398, 399). A. L. Weaver testifies that Kelley inquired of him for Newman, and that he called to Newman, in the direction of his shop, and received an answer. (7, 240, 241). Mr. Harben, witness for appellants, also testified that he was at the boat-house the day after Kelley, and got fresh paint on his clothes from the boat (41, 42); neither Creamer nor the fisherman have shown they did any painting on the boat about that time. All this strongly tends to corroborate the whole of what Kelley says.

(10) Mr. Kelley also testifies that he saw the appellee subsequently and that he showed no indication of being a cripple. (10).

M. B. HARBEN.

(11) Mr. M. B. Harben, who was also sent to West Seattle to ascertain what he could about the appellee,

testified that he saw him and talked with him at his home on April 25th; and on or about May 14th met him on the beach at West Seattle a considerable distance from his home; and was with Deputy Marshal Ide when he served a subpoena on appellee June 21th; that he saw appellee walk and stand erect without support for at least fifteen minutes, and describes his acts and appearance at all these times; and that he showed little or no indication of disability. Appellee admits seeing Mr. Harben at his house, but denies meeting him on the beach. (41, 44, 164).

SERVICE OF SUBPŒNA—G. L. IDE.

(12) Mr. G. L. Ide, Deputy U. S. Marshal, served a subpoena on the appellee June 11th, 1900, to appear as a witness on behalf of the appellants, in the taking of the additional testimony before Commissioner Bowman, and testified that when he called at the residence of the appellee, he came to the door, and, on seeing him, slammed the door in his face, but upon being advised by witness that he was an officer, appellee again opened the door and received the subpoena. Witness saw appellee walk and stand for a considerable time, described his appearance, movements and conduct, and says he saw no indication of disability. (88-92, 464).

WORK ON GRADE—NEAL MURPHY.

(13) Mr. Neal Murphy, a contractor on grading work at West Seattle, testified that the libellant worked for him as an able-bodied laborer, grubbing, shoveling and running a wheelbarrow, six days in March last, under the name of "H. Newman," and eight days in

April last, under the name of "J. Newman;" that the appellee worked along with the other men, made a good hand and was not discharged, but quit of his own accord. This was just following the decree in this case in the District Court. (93, 94, 96, 97, 110, 111, 114, 115, 125-7, 131-3).

TIME CHECKS.

(14) Mr. Murphy, who had personal charge of the hiring and discharging of his men and close personal supervision over them and their work, testified directly and positively to these facts and also produced in evidence the time checks (465-8) issued by him to the appellee for this work and delivered to him, and all of which were signed by appellee in his presence and afterwards cashed by appellee. (101, 116-118, 122-129, 134, 150-154.)

APPELLANTS' EXPERTS ON SIGNATURES TO TIME CHECKS.

(15) Mr. Jacob Furth, President of the Puget Sound National Bank of Seattle, the largest and strongest banking house in the Northwest, who has had seventeen years continuous, active service in the banking business; Mr. R. V. Ankeny, cashier of the same bank of which Mr. Furth is president, with eighteen years continuous, active experience in the banking business; Mr. A. M. Brooks, ex-postmaster of San Francisco and Seattle and now cashier of the Boston National Bank of Seattle, with fifteen years' experience as postmaster and eight years' continuous and active service as banker, and Mr. Frederick K. Struve, paying teller of the First

National Bank of Seattle, with ten years' continuous, active service in the banking business, were produced by appellants as experts upon handwriting. The signatures of appellee, made in the presence of Mr. Murphy, to these time checks and the admitted and sworn signatures of the appellee, some eight in number, in the original record in this cause, were placed before these thoroughly competent and practical experts in signatures and handwriting, and they all directly, positively and unhesitatingly testified that, in their opinion, all of the signatures, "H. Newman" and "John Newman," to the time checks in question, were in the same handwriting and written by the same person as the admitted and sworn signatures of the appellee in the record. (Ankeny, 138-147; Brooks, 169-180; Struve, 182-196; Furth, 196-206.)

APPELLEE ACTS UNDER ASSUMED NAME.

(15½) Mr. Murphy says he took down appellee's name as he gave it to him, "H. Newman" in March (94) and "J. Newman" in April. He also testified that he only takes one initial to save space on his book, and that whether right or wrong he always requires a man to sign as his name appears on the book (135). This together with the fact that appellee says he sometimes goes by the name of "Harry Newman" for short (373) may relieve him from the suspicion necessarily involved in leaving off his first name in March. This however does not apply to the April transaction. There he not only has an entirely different initial, but goes still further in signing his name "John Newman," when it

is "J. Newman" on the book (110) and time check (467-8), and thereby negatives any requirement of him on the part of the contractor as to signing his name.

DENIALS OF APPELLEE AND HIS HOUSEHOLD.

(16) As might be expected, the appellee and his entire household, consisting of his wife and brother-in-law (213), Creamer, controvert the testimony of Mr. Murphy, but we submit it makes little difference what their testimony may be; they are too highly interested; the appellee stands charged with too grave a fraud and his household too much in the position of accomplices for their testimony to be worthy of any consideration, in refutation of the disinterested, direct and positive testimony of Mr. Murphy, especially supported and corroborated as he is. The appellee and his immediate household should be treated as one and the same in this particular, for it is selfevident, under the peculiar circumstances of this case, that, if the appellee is guilty of the fraud with which he is charged, his immediate household is equally guilty with him, for it would have been impossible for the appellee to have carried on such a scheme to the extent to which he has gone without the knowledge and consent, or connivance, at least, of his immediate household.

APPELLEE HAS TESTIFIED FALSELY.

(17) We submit that it is established by the additional testimony that appellee has testified falsely in more than one particular, and consequently no part of his testimony worthy of belief. His testimony and that of Judge Samuel Coombs in several particulars is

directly contradictory upon material points where neither could possibly have been mistaken, and either one or the other, knowingly, testified falsely. The appellee testifies that Coombs saw him twice in April last and talked with him at length each time about the settlement of his case, (359-361, 392-394); and the testimony of Judge Coombs is that he had not seen the appellee for three or four months prior to that time. (28, 32, 33, 37). This relates to too recent a transaction for either party to be mistaken. The testimony of one is true and of the other is false, and which is it? Again, Michael Kelley testifies that on April 23rd last, he found the appellee at his shop at West Seattle, painting a boat. (7, 8). Appellee says that he was at the shop at the time referred to and saw Kelley, but was not painting a boat and never painted a hand-stroke upon it. (358-9). Neither can be mistaken in this matter, and the testimony of one is true and of the other is false. The testimony of Capt. Waite (53-56) and that of the appellee, as to the times appellee crossed on the West Seattle ferry and his movements and appearances at such times, is directly contradictory and the occurrences too recent to admit the possibility of mistake in either, and the testimony of one must be true and of the other false. The testimony of Mr. Murphy and the appellee, as to appellee's working on his grading work, is directly contradictory, wherein neither could possibly be mistaken, and the testimony of one must be true and of the other must be false. We submit that it would be a remarkable fact if this testimony of Judge Coombs, Mr. Kelley, Capt. Waite and Mr. Murphy,

reputable and wholly disinterested witnesses against whom no attempt was made at impeachment, should be utterly false, and this contradictory testimony of the appellee, who is interested not only to the extent of twelve thousand dollars in the result, but is more deeply interested in refuting the charges of fraud, simulation and perjury made against him. We submit that it is impossible for all these disinterested witnesses to be wrong in every instance, and perjure themselves without cause or excuse and the appellee right in every instance mentioned. If the appellee is wrong and has testified falsely in these particulars, or any of them, as we charge he has in all, and is shown by the additional evidence to have done, then, we submit, no part of his testimony is worthy of belief, and no part of his case or claims that he makes are free from suspicion, and the whole should be rejected.

VILLIFICATION OF APPELLANTS AND THEIR WITNESSES.

(18) We beg to call the particular attention of the court to the methods and tactics resorted to by the appellee in the conduct of his case, particularly upon the taking of the additional testimony. It seems to have been his idea that his case was strengthened and the damaging testimony against him refuted by villifying the other side and casting all manner of insinuations, innuendoes and charges of buying evidence, perjury, subornation of perjury and conspiracy to defraud. (Kelly, 11-19, 90; Coombs, 25, 31-36, 40; Harben, 48-52, 160, 161, 165, 207; Waite, 59; Gardner, 62-68, 78-79; Ide, 91, 92; Murphy, 94, 97, 106, 107,

109, 118, 119; Wells, 223-4; Cox, 256-7; Stevenson, 299; Newman, 359-366.) Nor did they stop here. Open threats were made against witnesses, before testifying, while testifying and after testifying, as well as everyone connected with the appellants' case. (Harben, 155, 156, 158, 159; Murphy, 122.) These attacks were refuted in every instance by the witnesses and persons against whom they were made, and in many instances by the appellee's own witnesses. (Cox, 256-7; Coombs, 38; Wells, 223-4.) The fact that no attempt whatever was made by the appellee to substantiate a solitary one of these charges or impeach a single witness produced by the appellants raises a conclusive presumption of the bad faith of the attacks. Naturally, Mr. Gardner, Mr. Harben and Mr. Kelley, as detectives, would be assailed. We regret the necessity of calling in detectives, but were driven to it by the acts of the appellee in blocking the usual and ordinary methods of investigation and resorting to the tactics he has. These detectives were employed and used as a necessary and legitimate agency for the discovery of the truth, and the appellee has not shown, and we defy him to show—for it is not true—that in one solitary instance has this agency of uncovering truth concealed by the appellee, been turned to any bad purpose. We beg to call the attention of the court particularly to the free and frank statement of Mr. Gardner, where he might have declined to answer if he had desired (59-66). We submit this statement of Mr. Gardner stands admitted as true by the appellee, as it is true, in every detail. Appellee brought out the statement and did not even

attempt to controvert any part of it. We submit the high character and standing of Mr. Gardner in the community fully cognizant of these facts and in which he has resided for the past twenty years (60, 61) stands, also admitted by the appellee, by his failure, after making so unnecessary an attack, to even attempt to impeach it, which he could easily have done, *were it vulnerable to such an attack.*

APPELLEE'S PRETENDED INABILITY TO ATTEND BEFORE
THE COMMISSIONER.

(19) We respectfully call the attention of the court to the fact that appellee failed to obey the subpoena served upon him by appellants, to appear as a witness in their behalf before the commissioner (88, 120) and that no showing whatever was made for this failure, except the statement of his counsel that he was unable, by reason of his crippled condition, to attend. The testimony of the United States marshal, who served the subpoena, contradicts this idea. (88-93). It is admitted that he made frequent visits to Seattle before. Then, when Mr. Murphy called at appellee's house the second time, by appointment, he was found bolstered up with pillows, head bandaged, etc. (163). No one had before seen him in any such predicament. Then he had his testimony in his own behalf taken at his home in West Seattle, over objections of appellants. (353). There is absolutely no showing of his inability to attend at the commissioner's office, other than the statements of his counsel. These plays on the part of the appellee have

something of a theatrical appearance, but he has been too inconsistent or indiscreet to make a good actor.

APPELLEE'S TESTIMONY DISCREDITED.

(20) This conduct on the part of the appellee is not consistent with honesty and fair dealing, and discredits his whole testimony, and creates a suspicion which permeates his whole case.

TESTIMONY OF APPELLEE'S WIFE DISCREDITED.

(21) Mrs. Newman stands flatly contradicted by both Michael Kelly and Judge Samuel F. Coombs, in material particulars in which neither she nor they can possibly be mistaken, and she or they have deliberately testified to what is false. Kelly and Coombs have no interest in the matter, and she is even more keenly interested than her husband. We submit that upon the whole her testimony is discredited.

BROTHER-IN-LAW CREAMER.

(22) Creamer is but a boy, and his testimony is not positive and is in many particulars very indefinite and uncertain; he has no particular remembrance of what he testifies to and takes much for granted. (213-221). This and the fact of his keen interest in the matter renders his testimony of little value.

APPELLEE'S NON-EXPERT OPINION TESTIMONY.

(23) This testimony is also attempted to be met and overcome by the testimony of numerous non-expert witnesses, to the effect that, in their opinion, formed from mere observation of the acts and appearances of

the appellee, his injuries and disability therefrom, were such that he was unable to do and that it was impossible for him to do the work that he was charged with doing. It is a remarkable fact that appellee should resort to and rely upon such evidence to the extent he has, after objecting to the same kind of evidence as incompetent and inadmissible, when offered by appellants, as the best evidence within their reach. (8, 9, 68, 69, 90). Certainly appellee's nerve has not been injured—he promptly objected to non-expert witnesses expressing their opinion as to the physical condition of appellee, from his acts and appearance upon the ground that such testimony was incompetent and inadmissible, because the witnesses were not physicians or surgeons; then refused to permit physicians or surgeons to examine him, that they might testify as experts as to his physical condition; and at last rested his case, as to his physical condition, solely upon testimony identical in character to that he objected to the appellants offering.

(24) While such testimony may be technically competent and admissible, yet it is, under the peculiar conditions of the case, as far as the appellee is concerned, secondary in character, for the reason primary, better and more satisfactory evidence was easily within his reach, and, if competent and admissible, is entitled to little weight, and the resort to it ground for grave suspicion. The best and primary evidence of the fact of the injury or disability and the nature and extent of it, and the ability of the appellee to labor under such conditions, particularly when fraud and simulation are

charged, admitted and established to the extent they have been in this case, is the testimony of skilled surgeons after making an examination of the body of the appellee. His resort to and reliance upon such evidence, under such conditions, raises a conclusive presumption that the primary and better evidence easily within his reach, would, if produced, be unfavorable to him.

NEIGHBORS DID NOT SEE APPELLEE WORKING.

(25) Appellee also puts a number of his neighbors and friends on the stand, who testify that he did not work on Murphy's grade, because he could not have gone to and from the work without their seeing him, which they say they did not. This is always the weakest and flimsiest character of evidence. It is at best poor proof that an act was not done that someone did not see it done. It throws wide open the door to fraud and mistake. It gives an unscrupulous or over-zealous witness a powerful weapon for the destruction of the truth. If it were possible, under the circumstances and conditions, for the act in question to have been done, notwithstanding such testimony against it, then, of course, the testimony is absolutely worthless.

(26 All of appellee's witnesses on this point, excepting Mrs. Jenkins and Mrs. Thomas, admitted, on cross-examination, or it clearly appears from their testimony, that, while it may have been inconvenient, yet it was possible for the appellee to have evaded their observation in going to and from the place at which he is charged with doing the work, and might have done the

work without their knowing it, and this disposes of their testimony on this point finally. (Cooper, 265; Thomas, 292; Stevenson, 297-8; Kile, 309, 310; Goldberg, 319.)

(27) While Mrs. Jenkins and Mrs. Thomas were very positive (and this woman can be, upon evidence very unsatisfactory, measured from a legal standard, when her mind is bent that way—as these two women evidently are) that appellee could not have performed the work as charged and eluded their notice, yet they both admitted, on cross-examination, that they did not specially recollect having seen the appellee on any of the days on which he was charged with doing the work, and that they could recall no fact or circumstance which specially impressed it upon their memory that they saw the appellee on any of those days, and that they did see him upon any one of those days they admitted they depended solely upon their supposed habit and custom of calling at his house (Jenkins, 334-5; Thomas, 339). Had this testimony been given at an earlier stage of the appellee's alleged affliction, while the witness at least believed that he was in a pitiable and critical condition, it would be worthy of more consideration, but referring to a time, as it does, nearly a year after he was hurt and after he had been for a long time able to be up and around and out of doors and even make trips, unaccompanied, over to Seattle, we submit that it requires not a little credulity to believe that these two women were at that time as vigilant and faithful in their calls upon and attention to the appellee as they seem to

think they were. Their testimony shows this to be a fact. They both said they knew nothing about the appellee going up and down the steep hill from his home to the beach, or making trips to Seattle, and did not believe he did or was able to do either (344-6, 340-1), yet it is conclusively shown that he did both. Appellee admits it, so they could not have been as watchful of the movements of appellee during the months of March and April last as they seem to think they were. Their minds evidently run upon what they did during the earlier stages of the appellee's supposed affliction, when they were impressed with the supposed gravity of the situation, and confound that with the latter stage. The appellee could have easily kept out of their sight for a week at a time during March and April and they never have noticed it. There are numerous reasons disclosed by their testimony and the testimony generally why this could have been the case. They are simply mistaken, which they could easily be, and that is all there is of it.

DELIVERY OF LETTER—MRS. PETERSON.

(28) Great stress was laid by appellee, upon the taking of additional testimony, to the testimony of Mrs. Peterson as conclusively establishing that on April 7th, at least, the appellee was not working on Murphy's grade. Mrs. Peterson attempts to locate the appellee at his home on April 7th, during working hours, from the fact that she delivered a letter at his house that day and knows that it was April 7th because a certain calf was born on that day (326), both the delivery of the

letter and the birth of the calf, however, having remained a matter of memory only for more than three months (327). Mrs. Peterson admitted, on cross-examination, that she delivered other letters at appellee's house about that time and was also about that time pretty extensively engaged in the letter delivery business about the neighborhood (327-9). The occurrences, upon which she depends to refresh her memory, might easily have been connected with the delivery of other letters at the appellee's house, or the delivery of other letters in the neighborhood, and been mistaken by her as connected with this particular case. It is a little remarkable that she can identify this particular letter, and the time of its delivery, with such accuracy, and be wholly unable, as she was, to describe any other of the numerous letters, or the dates of their delivery at the house of the appellee or in the neighborhood (328-9). She also admits, on cross-examination, to having exchanged notes with the appellee upon this matter, just prior to testifying (329, 330).

J. A. COX.

(29) The testimony for appellee of J. A. Cox, who, for a brief period of five days, from March 15th to March 20th (249), filled the position of foreman for Mr. Murphy upon his grading contract at West Seattle, to the effect that appellee did not work on Murphy's grade while he was there, is entitled to no weight whatever. He was not filling that position on the grade until March 15th, when appellee had been employed and had been working two days. He admits, on cross-examina-

tion, that he had nothing to do with the employment, discharge or payment of the appellee, or any of the other men, and kept the time only one day—the first day he was there; that he simply superintended the actual grading work; that Mr. Murphy, during the time he was on the grade, had personal supervision over the men and the work as well, and hired and discharged the men, kept their time and paid them off; that ten or twelve men were working on the grade during the time he was there, and were changing all the time—new men coming on and old ones going off; that he could not name or describe any of the men who were then working on the grade; that he did not become acquainted with the appellee until April, and is now only slightly acquainted with him, and that he paid but little attention to the personnel of the men at work. (249-252). It would seem, from his own testimony, that he paid very little attention to anything, for, after a brief authority of five days, he was himself discharged. (256).

THE BOARDING HOUSE—LEN WELLS.

(30) Mr. Wells, the boarding-house and saloon keeper, testified that, *to the best of his knowledge*, appellee never boarded at his house. (222). He admits, on cross-examination, that he had very little personal supervision over his business; that he took little notice of his boarders if, according to his books, he was getting his pay, which, he says, was the principal item; (225, 226, 228, 233); that he did not deal personally with the man, "H. Newman," carried on his books, and could not recall him. (233). He insists that only four or five

of Murphy's men boarded with him during the time in question, and could only name two, and refused to produce his books to disclose the number or names of his boarders during that time, evidently to prevent the contradiction of his statement as to the number and rendering the possibility of appellee escaping his notice less probable. (228-233). His testimony, upon the whole, discloses an evident desire to assist the appellee and prevent any disclosures which would militate against his success. Taking this into consideration, in connection with his admissions, that he paid so little attention to matters, we submit his "to the best of my knowledge" stands for very little indeed.

APPELLEE'S EXPERTS ON SIGNATURES TO TIME CHECKS.

(31) The appellee denies that the signatures "H. Newman" and "John Newman" to the time checks in question are his, and attempts to disprove the same and overcome the expert testimony on behalf of the appellants by the testimony of persons produced by him as experts upon handwriting.

(32) Messrs. Best and McPhee, produced as experts by appellee, admitted, on cross-examination, their experience and skill as experts in handwriting was derived from their positions as accountant and paymaster respectively of a railroad contractor (410, 419, 420, 424, 482), having, in the course of their business, only to pass roughly (447) upon the genuineness of signatures of workmen (446), involving very small sums (447), and where very little dependence is naturally placed upon the question of signatures, identity other-

wise being easily had and certainly resorted to, where there is any question at all (420, 447). They both admit they see similar features and characteristics in the two writings (421-2, 448-450).

(33) Mr. De Long, another of appellee's experts, admitted, on cross-examination, that he was a theoretical expert only (431, 444)—a writing teacher (431); that he had been employed during the past three and one-half years as deputy county clerk (443); that the duties of his position in no manner required the practice or exercise of the particular skill he claimed to possess (443-4); that he paid out no money of his own or anyone else, upon his skill and ability to determine the genuineness of signatures (444); that, after years of study and posing as a writing teacher and as an expert, he had so completely failed to impress anyone with faith and confidence in his skill and ability in these lines that he has been compelled, for the past three and one-half years, after ten years' residence in this community, (431) to earn his livelihood in a mere subordinate clerical position, the duties of which neither require nor permit of the exercise of the skill and ability he claims to possess. We submit the witness has not sufficiently qualified as an expert to give any weight to his opinion. That he has testified as an expert in other cases adds nothing to his qualification; there is no evidence as to the nature or importance of the cases in which he has testified or his *success as an expert witness*. We doubt not that Professor De Long can determine and describe with mathematical accuracy the deviations of any given

writing from strict Spencerian principals, but we seriously doubt and question his ability, from an entire lack of practical experience, to take signatures, devoid of every correct principal of penmanship, as those in question, and determine their genuineness, from comparison.

(34) Mr. Andrews, another of appellee's experts, is not positive (410, 415), and said he saw many similar features and characteristics in the two writings (411-413), and then repudiated his own testimony, whatever it may have been to either party, by admitting that he had little faith, anyhow, in expert testimony upon hand-writing (415). If he has no faith upon his own opinion and testimony, certainly others should not put more reliance upon it.

(35) That leaves Mr. Kelley, alone, of the experts produced by appellee, as possessing any of the qualifications of an expert to be compared with the experts produced by the appellants, and he admitted, on cross-examination, that his opinion was arrived at by consulting with Mr. Andrews, the president of the bank of which he himself is cashier (430), and also admitted that the two writings possessed similar features and characteristics (428).

(36) These witnesses, while their testimony may be admissible (as very little skill is required to qualify one as an expert witness in hand-writing), yet we submit their testimony is entirely insufficient to in any manner overcome or shaken the direct and positive testimony of the experts of such high character and recognized

practical experience as the witnesses produced by the appellants. Every one of the witnesses produced by the appellants as experts upon hand-writing are experts from a long, practical experience in business that requires the daily exercise of their skill and ability in that line in grave and important matters, and who are recognized as such by men of wide experience and affairs and entrusted by them, daily, to determine grave questions of business, and to pay out large sums of money, daily, upon the strength of their ability and skill as experts in hand-writing, and who have for many years stood the test. That there should be some difference of opinion on this point, even among experts, is not surprising and is only what invariably occurs.

(37) We submit the testimony establishes the identity of the signatures in question and corroborates Mr. Murphy to such an extent that nothing short of a full, fair and open surgical (physical) examination of the appellee, positively and conclusively establishing total disability during that time, and the production of the real Mr. "H. Newman" and "John Newman," if he be not the appellee, can overcome or in any manner shaken his testimony, and neither of which has the appellee done or shown any willingness to attempt.

CHARACTER AND STRENGTH OF MURPHY'S TESTIMONY.

(38) Mr. Murphy's testimony is too direct and positive and too thoroughly corroborated by the time-checks and supported by specific facts and incidents to be overcome or shaken by appellee's denials and the indirect and secondary evidence produced by him. Mr. Murphy

gave circumstances and incidents showing why these matters were specially impressed upon his memory, and that he could not be mistaken. He described the appellee perfectly to Mr. Harben as the man who worked for him, before he had seen appellee after discharging him (49); during the work in March, when he directed appellee and others to carry some lumber, he said the man Newman asked him to be relieved from that task, because he said he had a weak back (95, 107); that, when appellee quit work in March, he gave it as an excuse for leaving that he had a fifteen thousand dollar lawsuit on hand and had to go over to Seattle in connection with that matter. (96). Murphy, at that time, knew nothing about the facts in this case.

IDENTIFICATION OF APPELLEE.

(39) That there might be no question about the identity of the man Newman, who worked for Murphy, and the appellee, Mr. Murphy twice called upon appellee at his home, at the instance of Proctors for the appellants, the last time in company with Proctor for appellants and Proctor for the appellee, to see if it were possible for him to be mistaken, and both times positively identified appellee as the man who worked for him as "H. Newman" in March, and as "J." or "John Newman" in April. (97-99, 108-112, 116, 118-121, 125-6, 136). The first time he called at appellee's house, he found him in the back yard, splitting wood. (98).

AMOUNT OF WAGES OF NO SIGNIFICANCE.

(40) The claim of some of appellant's witnesses,

that the fact that he could earn four or five dollars a day as a ship carpenter, if able to work, should be conclusive that he did not work for Murphy at two dollars per day. There is nothing in such a supposition. He did the perfectly natural thing, in pursuance of his scheme. The fact is, the case lasted too long for appellee to hold out. Dire need compelled him to earn something (380), and had he worked at his particular trade—a ship carpenter, it would have been in circles where he was well known and the probability of its discovery by the appellants would have been infinitely greater than in his working for a stranger, on Murphy's grade around in the woods, where he could work under an assumed or modified name, as he did, and where appellants or anyone else would be least apt to expect it. The difference in protection, we submit, more than offsets the difference in wages.

ADMISSIONS OF APPELLEE AND HIS WITNESSES.

(41) It could not be expected that appellee or his immediate household would admit the charges of simulation and fraud made against him, or the facts and incidents shown by the appellants to establish them. However, they and a number of his witnesses have made admissions in this particular to an astonishing extent and sufficient in themselves to establish the charges of simulation and fraud and that the disabilities, if any, of appellee are neither permanent nor total. The appellee and his wife and his brother-in-law, Creamer,—his immediate household—admit that the appellee was able to get out of bed and move around in

the house about the latter part of last year or the first of the present and was soon thereafter able to go out of doors and make frequent trips from his home down to the beach and his boathouse and over to Seattle, largely without any assistance whatever. They all admit, and so do a number of his witnesses, that the appellee had greatly improved between the taking of the testimony in his behalf and the final hearing in the District Court, and has continued to improve ever since, and is now improving. (Appellee, 376-382, 392; Creamer, 219-221; Weaver, 239-241; Cooper, 262-3; Jenkins, 272-3; Thomas, 289-290; Mrs. Thomas, 341; Mrs. Newman, 397, 400-407.)

FRAUD AND SIMULATION ESTABLISHED.

(42) We submit that the admissions, appearances, perambulations and feats of the appellee, shown by the additional testimony, establish the charge made by the appellants that the appellee has been, from the beginning, simulating, and is now and was, substantially, at the time of the final hearing in the District Court, if he was ever seriously injured, a sound man *physically*.

II.

SECOND POINT.

“That a fraud was practiced by the appellee upon the District Court and the owners of the ship, in presenting to that court, as he did, the testimony theretofore taken in his behalf, showing, as he contended, permanent and total disability as the then true state of facts in the case; when he had, in fact, so greatly improved since

the taking of the testimony, that he then, at least, well knew that he was not permanently or totally disabled and had substantially recovered, and in not only thus concealing and withholding that fact from the court and the claimant, but by his own deliberate and intentional acts deprived them of the means of discovering it."

PERMANENT AND TOTAL DISABILITY CLAIMED.

(1) It has been the theory and contention of the appellee throughout the case that he was and is permanently and totally disabled—a miserable cripple for life. The testimony taken in his behalf, and which he contends establishes this condition of affairs, was taken some six months prior to the final hearing in the District Court. This testimony was presented to the court by the appellee, upon the final hearing in the District Court, as the then true state of facts in the case, without any suggestion or intimation of change or improvement in his condition since the taking of the testimony.

(2) The undue haste with which appellee pressed the trial in the District Court is pointed out in our principal brief at pp. 43, 44.

IMPROVEMENT ADMITTED.

(3) The appellee and his immediate household and a number of his witnesses admit, and it is clearly established by the additional testimony, that, at the time of the final hearing in the District Court, the appellee had at least so greatly improved and recovered that it was then certain that he was not permanently or totally disabled. (Admissions ante). This, alone, constituted

a fraud on the part of the appellee upon the District Court and the claimant.

CONCEALMENT.

(4) But it further appears from the original and additional testimony that the appellee not only failed to disclose, upon the trial in the district court, this change and improvement in his condition, since the taking of the testimony in his behalf, but by his own deliberate and willful acts, in remaining silent and in seclusion and refusing to submit himself to a surgical (physical) examination on behalf of the claimant and his failure to do so upon his own account, purposely kept both the court and the claimant, not only in utter ignorance of the false situation he was presenting to the court, but precluded them from the possibility of discovering it. (Our principal brief, pp. 41-44.)

(5) A more palpable, willful and deliberate fraud could not have been practiced than was thus planned and consummated by the appellee.

III.

THIRD POINT.

“That the fraud practiced by the appellee upon the district court and the claimant is intended and attempted to be perpetuated by him in this honorable court, by insisting upon the affirmation of the decree of the lower court, obtained as it was, and concealing and withholding from this court and appellants his present, as well as his past, physical condition, and all opportunity for investigating the same.”

(1) Notwithstanding the disclosures, the appellee still adheres to his original theory and contention that he is permanently and totally disabled. He still remains in seclusion, and, upon the taking of the additional testimony, at the outset objected to the taking of any additional testimony although the court had opened the case for that purpose (3), and again refused to submit to an examination by surgeons on behalf of appellants (see argument on point IV, post), and failed to put in evidence any such examination, made even *ex parte*, by surgeons of his own selection, and thereby voluntarily and deliberately withholds the primary and only true test of his alleged disabilities and conduct both from this court and appellants. He thus commits himself to the intention and purpose of perpetuating in this court the fraud practiced by him upon the district court and the claimant.

IV.

FOURTH POINT.

“That the refusal of the appellee to submit to a surgical (physical) examination on the part of the appellants, on reference of the case to take additional testimony on appeal, and his failure to cause such an examination to be made, by reputable surgeons of his own selection, upon his own account, under the circumstances of this particular case, raises a conclusive presumption that he is guilty of fraud and simulation, as charged.”

DEMANDS FOR SURGICAL EXAMINATION.

(1) On June 8th a written demand, for permission to make a physical examination of the appellee by

surgeons on behalf of appellants, was served upon proctors for appellee and upon appellee in person. Proctors for appellee, on the following day, in writing, refused this demand. Appellee in person took no notice of the demand. The demand and refusal, in the additional record as appellants' Exhibits F (469) and G (472), speak for themselves (165-9).

NO GROUND FOR REFUSAL.

(2) This demand was reasonable and proper and assured to the appellee all safeguards and protection he had any right to require. The written refusal by counsel for appellee recites that the refusal was upon the ground that an opportunity was given the claimant in the trial below for such an examination as is now demanded and that he failed to avail himself of it. As to what did occur in the trial below, we respectfully refer to our principal brief (pp. 41-4) and to the additional testimony (165-9, 455-461). Even though the contention of the appellee in this particular be true (which we deny), it would not justify the refusal when the case had been reopened by this court for the very purpose of taking additional testimony as to the nature and extent and probable extent of the libellant's injuries, past, present and prospective, and to determine whether or not the appellants' charges of simulation and fraud on the part of the appellee were true or false.

SHAM OF OFFERING TO SUBMIT TO SURGICAL EXAMINATION.

(3) There is also a pretense at setting up a refusal by appellants to accept an examination, upon the taking

of the additional testimony, made by surgeons selected by the district judge, as justification of the refusal by appellee to comply with this demand of the appellants. That this is a mere pretense is manifest—a repetition of the vacillating, dallying and evasive tactics resorted to by appellee upon the similar demand in the trial below, and because of and to avoid which the demand, upon the taking of the additional testimony, was made in writing and a reply in writing required. (167-8, 457-8.) Besides, the written refusal of the appellee, as well as the testimony of his counsel and counsel of the appellants (167-8, 457-8), shows there never was an *offer* on the part of the appellee to *submit* to an examination by surgeons appointed by the district judge, but merely an *inquiry* on his part if such examination would be accepted (Exhibit G, 472), and that was met by *no objection* whatever on the part of the appellants to such an examination, but the appellee was informed appellants would insist, nevertheless, upon their demand (167). Appellants did not believe the inquiry was made in good faith and did not propose to be swerved from their purpose to avoid such negotiations as occurred below, and to preserve in writing what transpired upon this demand, that there might be no question this time what actually occurred. That this inquiry was not made in good faith is evidenced by the fact that appellee did not follow it up with such an examination upon his own responsibility. The appellants threw no obstacle whatever in his way, in the bringing of this about. Such an examination, made by reputable surgeons, while not what appellants think they are en-

titled to, yet it would doubtless have been much more satisfactory to the court than the testimony of the appellee, his wife and brother-in-law, *his counsel* and personal friends of his own selection, to the effect that, from mere observations and hearsay, they believe that the appellee was seriously injured and is permanently and totally disabled and wholly unable to perform any manual labor now or hereafter, and a miserable, helpless and pitiable cripple for life.

(4) And, again, the testimony of the appellee, as to his willingness at all times to have a surgical examination (368-9), is too sham and unreasonable to be considered at all. He admits this willingness on his part was only communicated to his proctor (390) and that he knew of appellants' demands and efforts to procure a surgical examination (391); and the acts of his proctor too flatly contradict any such instruction or feeling on the part of the appellee. It is too inconsistent with their action, both in the trial below and on the taking of the additional testimony, to be true. Besides, the attempt thus to shift the entire responsibility upon the shoulders of proctor for appellee comes rather late, and is an admission that the appellee's case needs to be relieved from the suspicion their course in this particular has entailed upon it, and that the attempt of proctor for appellee to justify his course in the matter has been a failure. It is certainly self-sacrificing on the part of the proctor for appellee.

CHARGE OF CONSPIRACY BETWEEN APPELLANTS
AND SURGEONS.

(5) Proctor for appellee gives as an additional reason for refusing appellants' demand for such an examination, that the appellants insisted upon Doctors Eagleson and Ford making the examination, with whom they had prearranged to have the testimony of Doctors Miller and Wotherspoon contradicted and an examination very adverse to the appellee put in evidence. (457). Although the objection was not made to the last demand, to show that there was utterly no foundation for such a charge or excuse, and the *extent to which the other side have indulged their imaginations in this case*, Doctors Eagleson and Ford were called as witnesses by appellants and testified to their connection with the case, denying that they had given appellants or anyone connected with their defense any assurance whatever as to what their testimony might be, and that the only assurance they had given them was that, from what they had learned from reading the testimony of Doctors Miller and Wotherspoon, *this was a case in which a careful and skillful physical examination of the appellee by competent surgeons would greatly aid in arriving at the truth.* (Dr. Eagleson, 136-8. Dr. Ford, 147-9.)

CIRCUMSTANCES CALL UPON APPELLEE FOR FULL
DISCLOSURE.

(6) In view of the charges of simulation and fraud and of knowingly presenting a false situation to the court, made against the appellee, and his deliberate withholding from the court and the appellants the true

situation of affairs and the only direct and proper means and method of disclosing the true state of facts, the admissions of the appellee, his household and his witnesses, and the direct and positive evidence on behalf of the appellants, establishing not only the charges but the fact that the appellee is now and must have been, at the time of the trial in the District Court, a sound man physically, we submit the appellee is called upon, if he would be fair and honest with the court, to completely unmask himself, and not only *permit*, but *invite* and *demand* a full and thorough investigation. We charge that the appellee, in refusing to permit such physical examination, as demanded by the appellants upon the taking of the additional testimony, or a reasonable substitute for it, and his failure to give the court and the appellants the benefit of such an examination made upon his own account by reputable surgeons, even of his own selection, is conclusive evidence that he is and has been simulating from the beginning and has practiced a deliberate and palpable fraud upon the court and the claimant below and intends and proposes and is attempting to perpetuate the same in this court. This conclusion, we submit, is irresistible, for why should he be so averse to the light and so persistently refuse to submit to the only true and proper test of this most vital question, and insist upon its being determined by means and methods secondary in character and which he can control much as he pleases, if he had nothing to fear and nothing to conceal? Why did not appellee call upon his own physicians and surgeons, *who can more effectually than anyone else refute the charges*

made against him, if they are in fact untrue? Where is Dr. Miller? Where is Dr. Wotherspoon? who attended appellee when he was injured and who testified in his behalf just one year ago, and upon whose medical and surgical testimony given at the time, appellee insists upon resting his case. Neither are shown to be dead, or out of the country, or unwilling to testify further in appellee's behalf. Is it possible that they have been consulted by the appellee and he informed by them that *their further testimony* would not do his case any good? Such, we submit, under the circumstances of the case, is the presumption the law raises. Appellee says Dr. Miller is still prescribing for him, although he has not been to see him since last December, and is giving all the medical and surgical attention he is receiving. (374-5). Would not a little further testimony from Drs. Miller and even Wotherspoon, as to their subsequent investigations and examinations of the appellee, (he admits such were made) be a little more satisfactory to the court than the testimony that has been substituted for it; and would not their testimony upon the taking of the additional testimony after a careful examination of the appellee been infinitely more satisfactory, direct and positive as to the appellee's physical condition than the character of evidence which the appellee insists the court shall take in its stead?

(7) Counsel for appellee testified upon his oath, upon the taking of the additional testimony, that he believed a further surgical examination would develop greater disability (460). Then why in the name of reason, we

submit, didn't he permit it on our part or produce it himself? This statement is not very consistent with the laborious effort, both in the trial below and on the taking of the additional testimony, the voluminous personal affidavit of counsel for appellee, resisting claimant's motion in the District Court for permission to make a surgical examination, and the voluminous written refusal of the same, upon the taking of the additional testimony—all, to shut out such an examination on our part, that they might have the privilege of omitting it themselves, and thus entirely elude it. He then further testifies that he did not consider a further surgical examination necessary (456-8); but he not only deemed it necessary to call upon a large number of non-expert witnesses to testify as to their opinion of the physical condition of the appellee and of the nature and extent of his injuries, *but to himself go upon the stand and testify to that effect.*

REFUSAL AND FAILURE TO HAVE SURGICAL EXAMINATION FATAL.

(8) We submit appellee's refusal upon the taking of the additional testimony, to submit to or produce some reasonably satisfactory surgical or medical test of the fact, nature and extent of his alleged injuries, is fatal to his recovery.

TESTIMONY OF PROCTOR FOR APPELLEE.

(9) *We most respectfully call the attention of the court to the testimony of Mr. Martin, of proctors for the appellee, and solely from motives of professional courtesy*

refrain from any comment whatever. This we submit to the careful consideration of the court. (452-462.)

LAW OF THE CASE.

(10) A disposition in a plaintiff or defendant to smother the truth is fatal and should be fatal to his case.

(11) The conduct of a party, in preventing or omitting the production of evidence in elucidation of the subject matter in dispute, which is peculiarly within his power, raises a strong suspicion that the evidence, if adduced, would be against him.

Stark on Evidence, Vol. 1, p. 54.

(12) "That if weaker and less satisfactory evidence is given and relied on in support of a fact, when it is apparent to the court and jury that proof of a more direct and explicit character was within the power of the party, the same caution which rejects the secondary evidence will awaken distrust and suspicion of the weaker and less satisfactory, and it may well be presumed, that if the more perfect exposition had been given, it would have laid open deficiencies and abjections which the more obscure and uncertain testimony was intended to conceal."

Clifton v. The United States, 4 How. 242.

Dalrymple v. Craig, 50 S. W. 884.

(13) The general rule above set forth is further illustrated and established by the holding, that the

failure of a party, without satisfactory explanation, to call witnesses peculiarly situated to know the truth, raises the presumption that their testimony would be strongly against him and fatal to his suit.

The Joseph B. Thomas, 81 Fed. 578.

Railway Co. v. Ellis, 10 U. S. App. 640.

Frank Waterhouse, Ltd., v. Rock Island & Alaska Min. Co., 97 Fed. 466.

Hicks v. Nasson Electric R. Co., 62 N. Y. S. 597.

The Ville Du Havre, Fed. Case No. 16943 (7 Ben. 328).

The Fred M. Laurens, 15 Fed. 635.

(14) This general rule is also further illustrated and established by the holding that the suppression or making way with written instruments, supposed to contain evidence material to a case, by a party thereto, raises a presumption that their contents would have proved unfavorable to his case.

Jones v. Knauss, 31 N. J. Eq. 609.

The Olinda Rodrigues, 174 U. S., 510.

Mantonya v. Reilly, 56 N. E. 425.

Ames v. Manhattan Life Ins. Co., 52 N. Y. S. 759.

Rector v. Rector, 3 Gill. (Ill.) 105.

Merwin v. Ward, 15 Conn. 377.

Riggs v. Penn. & N. E. R. Co., 16 Fed. 804.

Winchell v. Edwards, 57 Ill. 41.

(15) Another illustration of this general rule is the holding that, where salvors conceal from the court the

names of persons participating in the salvage service, *their libel will be dismissed.*

Hessian v. The Edward Howard, Fed. Case No. 6436 (1 Newby. Adm. 522).

(16) Destruction, concealment or fabrication of evidence, or an attempt to stifle or thwart investigation, even in criminal matters, raises a presumption of guilt.

Lawson on Presumptive Evidence (1st Ed.), pp. 533, 539.

V.

FIFTH POINT.

“That whatever merit the claims of the appellee may have had (and we deny they ever had any), the fraud practiced by him through deceit and fabrication of evidence, upon the District Court, as well as the owners of the ship, in the trial below, and his intention and attempt to perpetuate the same in this court, estops him from asserting such in this or any other court, and is fatal to his recovery.”

(1) “A proved fabrication of evidence, unexplained, will compel an adverse decree.”

The Tillie, Fed. Case No. 14048 (7 Ben. 382).

The Chicago City Ry. Co. v. M. Mahon, 103, Ill. 485.

The Sylvan Grove, 29 Fed. 336.

(2) An attempt at imposition and fraud upon the court is fatal to any merit the claims of the guilty party may have.

The Dos Hermanos, 2 Wheat. 76.

(3) The fraudulent raising or exaggeration of even a meritorious claim vitiates the whole claim.

The Sampson, Fed. Case No. 12279 (4 Blatch. 28).

Respectfully submitted that the decree of the District Court should be reversed and the libel dismissed.

METCALFE & JURY,
ANDROS & FRANK,

Proctors for Appellants.

August 27th, 1900.

IN THE

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

J. F. HIGGINS, Master of the Respondent
Steamer "Homer," Claimant, and J. S.
GOLDSMITH and F. M. GRAHAM, Stipu-
lators, *Appellants,*

vs.

CHARLES H. NEWMAN, *Appellee.*

FILED

MAY 8 - 1900

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.
IN ADMIRALTY.

BRIEF OF APPELLEE

MARTIN, JOSLIN & GRIFFIN,
Proctors for Appellee.

SEATTLE, WASHINGTON.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS.

FOR THE NINTH CIRCUIT.

J. F. HIGGINS, Master of the Respond-
ent Steamer "Homer," Claimant, and J.
S. GOLDSMITH and F. M. GRAHAM,
Stipulators, *Appellants*,
vs.

CHARLES H. NEWMAN, *Appellee*.

No. 598.

BRIEF OF APPELLEE

STATEMENT OF THE CASE.

This action is brought by the Appellee, Charles H. Newman, to recover damages for personal injuries which he received in a collision of the Steamship "Homer" with the Brigantine "Blakely" on the morning of the 26th day of April, 1899.

At the time of the collision, the Brigantine "Blakely" was lying properly moored to the south side of Schwabacher's wharf, in the city of Seattle, with her

bow toward shore and her stern in shore from 200 to 250 feet from the outer end of the wharf. Appellee was at work as a shipcarpenter on the Brigantine "Blakely," and was stooping over, boring and fastening down a piece of wood on a booby hatch, which was being built on over the main hatch and was at about the center of the hatch, with his face toward the wharf, when the Steamship "Homer" ran into the Brigantine "Blakely," breaking and tearing away her chain plates and carrying away the fore rigging of the vessel.

The end of the fore yard arm of the Brigantine "Blakely" was broken off at the point where the end of the penant is fastened, at about two feet in from the end of the yard arm. The yard arm at the point where it broke, and the penant was attached, was in the neighborhood of six inches in diameter. The penant is a large wire rope, some fifteen feet in length, with a large block attached to the lower end, with ropes running aft on the ship and made fast on the starboard side. When the penant broke from the fore yard arm, it and the block were hurled with great force down across the vessel from starboard to the port side, and, as one witness put it, "It came down like —the same as you would strike a whip (Brown, Record 102), where it struck the appellee with great force in the back, at about the region of the fifth lumbar vertebrae, as he was running as fast as he could to get ashore. The block was about twelve inches long by about eight inches wide and eight inches thick, and weighs about twenty pounds. The penant weighs in the neighborhood of forty pounds.

The force of the blow knocked the Appellee down, bruising and breaking his back, so that he was unable to rise or have any use or control over his lower limbs, and was carried from the vessel to the wharf in a helpless condition, suffering extreme pain. Appellee was taken to Providence Hospital, where he remained for the period of three weeks, when he was taken on a stretcher to his home at West Seattle, where he now is.

The Appellee at the time of his injury was thirty-seven years of age, a strong, healthy man, a skillful ship carpenter, and had almost constant work, and was earning five dollars a day when bossing a job as foreman, and four dollars a day when working as a ship carpenter; was a married man and had one child.

While in the hospital, the Appellee was unable to eat anything, and the only nourishment taken was milk. He was obliged to lie constantly on his face with his limbs extended, which was the only position in which he could lie. He had lost control of both his bowels and bladder, and had to have mechanical assistance in performing the functions of these organs. At the time Appellee's testimony was taken, and at the time the testimony of his nurse and his physicians was taken, on the 2nd day of August, 1899, he was still unable to lie in any other position than on his face, with his limbs extended, and supported by a pillow. He had no control over his limbs and was unable to turn around or move any portion of his body other than his shoulders, head and arms. In turning or being moved he required the assistance of his nurse, which took con-

siderable time and care and gave the Appellee extreme pain. His kidneys and bladder were injured, and their discharge had a milky appearance and contained puss and other matter. Appellee has suffered almost constant excruciating pain since his injury and has been rendered a cripple for life and unable ever to follow his trade, and has incurred an indebtedness of several hundred dollars for assistance; care and medical attendance.

At the time Appellee was injured it was a bright, clear morning. There was no obstruction of any kind to shut off the view of the officers of the Steamship "Homer," and they had open, clear water for a distance of from six to ten miles, extending out into the bay from the end of the wharf at which they intended to berth the Steamship "Homer," in which to navigate the boat. They gave the Appellee no warning whatever of the approach of the Steamship "Homer," to the Brigantine "Blakely," knowing they had lost control of their vessel, and that there was sure to be a collision.

The vessel is a twin screw steam schooner, with light machinery, and rides high out of the water, and is 146 feet long, with a 38 foot beam. The Steamship "Homer" is supplied with a double set of bell cords, the handles of one set of which come up on the port side of the pilot house within about two feet of each other, and the other set come up on the starboard side of the pilot house. The claim is made by the Captain that when he gave the signals to stop and back the port engine, he did not hear the port gong sound or respond to his signals; that he discovered something wrong with the bell cords, and

without repeating his signals on the port engine gong with the wire or bell cord on the starboard side of the pilot house, which he could have done instantly, he gave signals on the starboard bell to back the starboard engine, and that his vessel was thereby swerved out of her course, and before his mistake could be discovered the vessel had swung so far in that it was impossible to turn her out, and that the only thing that could be done was to put the helm hard to port, with the view of hitting the "Blakely" a glancing blow, as much as possible.

The Captain gave no orders to the man at the helm whatever, and the man at the helm made no effort whatever to guide the vessel or to keep her in her course and in the direction she was going, but stood idly by at the helm, saw the vessel swerving from her course without changing the helm or endeavoring to guide her at all, and the only order given by the Captain, and the only change made at the wheel, was when the Captain saw that the vessel had swung so far that she could not be turned, he gave the order to put the helm "hard aport."

The vessel is also provided with a speaking tube to the engine room, and with a return tube from the gongs for the return sound, so that the Captain could hear if his signals had been given, on the bridge in front of the pilot house. And from the position in which the Captain was standing on top of the pilot house, he could have reached the whistle cord and signalled the engineer to stop at once, had he exercised any care in the premises whatever.

The Court will observe from the Libellant's Exhibits

“C,” “D” and “E,” that on the port side of the pilot house the starboard gong bell cord is muffled, and on the starboard side the port gong bell cord is muffled (Record 505, 507, 509.)

This was the first time that the Claimant, Captain Higgins, had taken the Steamship “Homer” out, and was the first time he had ever operated a twin screw vessel. These bell cords were muffled by Captain Higgins, and for what purpose, or what good they could expect from purposely putting one set of bell cords out of use and in a condition so that they could not be used in case the other set failed to work, or of an emergency,—which is the very purpose for which the vessel is provided with a double set—, it is difficult to say, unless it would be that having two sets of bell cords at hand would expose the falsity of their claim as to how the accident, happened and explode their theory of “an inevitable accident.”

The Steamship “Homer” was about to put to sea at the time Libellant filed his suit and caused her to be seized by the marshall. The suit was brought for the sum of fifteen thousand dollars damages against the vessel. Libellant was required to bring his suit at once in order to seize the vessel, and at the time the suit was brought it was impossible to determine the full extent of Libellant’s injuries. Claimant and Appellants were unable to procure a bond in double the amount of the claim, as required by statute, and at their earnest solicitation, proctors for Libellant, not desiring to impose any hardship upon the Claimant and Appellants, agreed to accept a bond in the sum of

twelve thousand dollars, which it afterward transpired was clearly insufficient to compensate Appellee for the injuries he sustained, and upon which the honorable District Judge awarded damages to the full limit of the bond. The bond stands in the place of the vessel, and unfortunately, in this case, measures the limit of Appellee's recovery. A bond in the sum of twelve thousand dollars, and a cost bond in the sum of two hundred and fifty dollars, was furnished the marshall, and the vessel released.

Exceptions were filed to Claimant's answer by Libellant, which were sustained by the District Judge (Record 31). Whereupon Claimant filed an amended answer, and thereafter an amendment to the amended answer, to which a reply was interposed, alleging that said amended answer was untrue, uncertain and insufficient; and that the amendment to the amended answer was untrue, uncertain and insufficient. The amended answer is irrelevant, immaterial and insufficient, and does not state facts sufficient to in any wise mitigate the damages or release the said Steamship "Homer" from the damages and injuries caused to Libellant or at all, or to constitute a defense to the whole or any part of Libellant's libel as amended.

Appellee contends that the collision was not an inevitable accident, but was caused solely by the fault, careless, negligent and wrongful acts and omissions of the Master and Claimant, J. F. Higgins, of the respondent vessel, and fault on the part of said vessel, in the following respects:

1st. "In signaling the engineer to back the star-board engine without first actually knowing that his intended orders to back and reverse the port engine had been executed by the engineer."

2d. "In not giving attention to the helm, which is the means provided for controlling the course of a vessel under way; and neither one of these errors can be excused by reason of an unknown injury to the pintle."

3d. In running the vessel northward across the harbor and the ends of the wharves, in the city of Seattle, toward Schwabacher's wharf, at which the "Homer" was intending to land, by the port engine, which would at all times have a tendency to turn the vessel into the wharves, and which could only be counteracted by the rudder working against the engine constantly.

4th. In purposely putting one set of the bell cords out of use, and in not using the same when the captain claimed to have discovered defects in the one he used to give signals and that it was not working and that the gong did not sound.

5th. In not using the whistle or speaking tube for the purpose of signaling the engineer to stop the vessel.

6th. In not being in a position where he could hear the return sound of the gong through the return tube when he pulled the bell cords, when he would have known to a certainty that his signals were not received in the engine room.

7th. In running the Steamship "Homer" at an

excessive rate of speed across the harbor and too close to the wharf at the end of which he desired to land, without checking her speed and turning his vessel back so as to make a safe landing, and without observing the running and course of the tide and wind at the time.

8th. In failing to discover the manner in which Appellants claim the pintle was bent, as shown in Claimant's Exhibit No. 6, when the same, if bent as claimed by Claimant, was perfectly apparent and obvious to the most negligent person, and was not more than a foot and a half from the very handle attached to the wire running through the printle with which the signals were given.

9th. In failing to give any danger signal or warning to Libellant or those on board the Brigantine "Blakely," when the Captain saw the course the Steamship "Homer" was taking and that there would be a collision with the "Blakely."

10th. In failing to discover that the bell cord hung in its recoil, and giving two pulls on the bell cord when the spring and life, as it were, were out of the cord, which could be discovered without any difficulty whatever.

That the limit of the amount that Appellee was awarded and could recover was the amount of the bond of Stipulators, and as that was made less than one-half of the amount which Appellee could have required, so as not to work a hardship on Appellants, and this appeal having no merit and being taken for the purpose

of delaying and harassing Appellee, Appellee asks that costs, damages and interest should be awarded under Rule 30 of this Court on the appeal bond in the sum of two thousand five hundred dollars, in addition to the sum of twelve thousand dollars awarded Appellee against Claimant and his Stipulators.

BRIEF OF THE ARGUMENT.

I.

(1) Appellants' first contention is, that the injuries which the Appellee sustained are the result of what they term "an inevitable accident." That there is such a defense we do not deny, but that the party interposing such a defense must show by clear and conclusive proof that the injuries and damage sustained could not possibly have been caused by any act or omission of negligence on their part, is so well settled in law that it will not be necessary to cite authorities.

In this case appellant have not only failed to prove by proof conclusive, but have utterly failed to prove that the injuries caused to appellee could have been caused by any fault or act of negligence on their part; but, on the contrary, their own evidence convicts them of negligence, not only in one respect, but at least in ten different instances, any of which would be sufficient to account for the injuries which they inflicted upon the appellee. From appellant's numerous citations to

the record contained in their brief upon this proposition, a person might be supposed to believe that their propositions were supported by testimony in the record, but the Court will find upon reading the testimony, and from an examination of the same, that their propositions not only lack any support whatever, but that the testimony proves many of their statements to be untrue. And as proctors for appellants are gifted with the ability to make a counter-charge to whatever charge may be made against them, irrespective of the truth, we deem it more advisable and convenient to quote from the testimony itself upon the points.

(2) The Master of the Steamship "Homer" claims to have made an examination of the bell cords while at Moran's wharf, about fifteen minutes prior to the collision. The Court will see from an examination of Libellant's Exhibit "D" (Record 507) that the pintle on the unmuffled bell cord shown in the picture, which is the one claimed by appellants to have gotten out of order by the pintle being bent over, as shown in Claimant's Exhibit No. 6 (Record 560), was exposed unprotected and in open plain view, and the Captain in looking to place his hand on the handle of this cord would necessarily look directly at the pintle, as it was right in his line of vision.

Claimant Higgins testifies (Record 381):

"Q. You did not go down on the main bridge to examine the bell cords at all, did you?

A. When?

Q. Before you started from Moran's?

A. Oh, yes; we pulled the bells both above and down below.

Q. Before you started?

A. Yes; I mean on the lower bridge, where the bells were forward and up above, abaft the pilot house.

Q. Pulled all the bells?

A. All the bells, all four.

Q. You mean to say they were all right at that time?

A. Well, every bell struck and I saw nothing the matter with them.

Q. If that pintle had been bent at that time you you would have noticed it?

A. I do not see how I could have helped it. I might not have noticed it, the bend of the pintle, but if the cap had caught the way it did afterward I certainly would have noticed it."

(And on Record 334):

"Q. When you reached your hand to catch it, your hand would not be over a foot and a half from this pintle in this ship, would it?

A. No.

Q. And in plain view?

A. Yes, sir.

Q. Right beside you?

A. Yes, sir.

Q. Nothing hide it at all?

A. No."

We submit that on Claimants own testimony he either never made an examination of the bell-cords, as

he stated he did, before leaving Moran's wharf, or made it in such a careless and negligent manner as to be equivalent to the same thing. This testimony shows that not to discover a defect at so vital a point in the machinery of the vessel as this printle was, which was so open and apparent, and upon which the Captain was almost required to place his hand in making the examination which he says he made, establishes the clearest kind of negligence. And this bend in the printle is the "Latent defect," as they style it, upon which they base their defense of "an inevitable accident." The Honorable District Judge properly found the Captain negligent in this respect.

(3) The Claimant, Captain Higgins, was also negligent in running his vessel across the ends of the wharves of the city, which lay to the east, in going in a northerly direction from Moran's wharf to Schwacher's wharf, on this port engine, with his starboard engine at rest, for the reason that the port engine would have a tendency to turn and drive his vessel into the wharves, and could only be kept out by the counter action of the helm or rudder.

Captain Newhall testified (Record 268):—

"Q. Would it not be negligent for the captain of the steamer "Homer," in going in a northerly direction with a southwest wind, to run his boat by the port engine when he was [intending to make a landing at the outer end of the wharf?

A. I do not know what it would have been on his part; I would not have run the port engine.

Q. Would it not have been proper to run the starboard engine instead of the port engine?

A. I think so.

Q. Had he run the starboard engine instead of the port engine, would it have been possible for this collision to have happened?

A. I think not.

Q. Is not that the usual manner in which captains run their vessels in making a landing at the wharf, at the end of the wharf, similar to such a landing as the "Homer" was about to make?

A. I should certainly run on the starboard engine; if I was going to run only one, I would run the starboard one.

Q. So as to keep the vessel from going into the wharf?

A. Yes; going in below the wharf.

Q. That would be the object of running a starboard engine?

A. Yes, sir.

Q. If the port engine was running it would be more likely to cause the vessel to strike in there against the wharf, would it not?

A. To turn her down, to turn her to the right. She has two screws here and she is going from the southwest up toward the northwest to go across the end of that dock. If she is going ahead on this one, it would have a tendency to turn her around to the right, whereas if he took the starboard engine the effect would have been to turn her the other way." * * *

(And on Record 255):

“Q. If he had been making a landing as a landing is ordinarily made, instead of getting away in the slip as he did, could not he just as well have backed the port engine and sent the starboard engine forward and escaped hitting the wharf altogether?

A. I suppose so; sure. A double screw boat with good power ought to turn around in her own length by going ahead on one engine and backing on the other.

Q. What would you say as to the seamanship in making such a landing as has been described that the “Homer” made here in coming in collision?

A. I would not like to answer that question.

Q. I would ask you for your opinion on it, Captain?

A. Well, I would think of course—I never met the captain, and I do not know who he was—but I would think that he was a man of very little experience.”

Captain Higgins himself admits that he never ran a twin screw vessel before and that this was his first experience with the Steamer “Homer,” but that he had a brother who used to run a twin screw vessel (Record 381).

“Q. Have you ever been a master of a twin-screw steam schooner before?

A. I never have before this one.

Q. This was the first twin-screw that you have ever operated?

A. No; I have a brother who operated a twin-screw and I was with him in New York. I made several trips with him and pulled the bells.

Q. This is the first one that you operated.

A. This is the first one that I have been master of. I do not think there is another one on the coast."

So that running the vessel from Moran's wharf to Schwabacher's wharf, the point of collision, by the port engine, was certainly to say the least poor seamanship.

(4) The Claimant, Captain Higgins, was also negligent in running his vessel at too high rate of speed, and too close to the wharf at which he was about to land, before taking any steps whatever to turn her back.

Captain Higgins testifies (Record 275-6):

"Q. Now, Captain, before the collision, and as you were coming over, what, in your judgment, was the speed of the "Homer" in coming over from Moran's wharf?

A. Probably from four to five miles an hour when she got to going.

Q. Did she use both engines in coming over?

A. Only one engine.

Q. Which engine?

A. The port engine, under what we call a slow bell.

Q. Now, state to the commissioner how the collision took place.

A. On the way down from Moran's wharf, I got what I thought was within an easy distance, where I had time to stop her before she would get down to Schwabacher's wharf; I intended to stop the engine and let her go a little farther, and then back both engines and stop him. And as I put my hand on the bell-pull

to pull the bell to stop her, I notices that the ship that was lying on the north side of Schwabacher's wharf laid so that her bowsprit stuck out beyond. I did not notice this, however, before. Well, as I notices as I was going to pull this bell and stop the engine, I noticed the ship's bowsprit sticking out by the of the wharf.

Q. Which end of the wharf?

A. Where I proposed to land, on the outer end of the wharf; that was sticking out by the end of the wharf.

Q. On the other end of the wharf, from the direction in which your ship was coming?

A. Yes, sir. * * * "

(And on Record 304)—

"Q. How close were you on to Schwabacher's wharf before you observed the bowsprit of the 'Hatton Hall?'

A. Oh, probably more than the length of the vessel away, probably—well about two hundred feet from the wharf.

Q. Two hundred feet south of the wharf?

A. Yes, sir.

Q. You mean the "Homer" was two hundred feet from the wharf?

A. Yes, sir; when I first observed this bowsprit."

For the Captain to allow his vessel to run at the rate of five miles an hour, with the wind and with the tide, to within her own length from the wharf, which is 140 feet, or at most 200 feet, before turning her back, was surely clear negligence.

Captain Bryant testifies (Record 242) that going at the rate of between two or three miles per hour, with no wind, the tide slack, and with both engines backing full speed, they ought to hold her in 300 feet, and at the rate of six miles per hour it would take about 450 to 500 feet in which to stop her.

D. A. Miller testifies (Record 244) that he was on Schwabacher's wharf and saw the collision, and said:—

“Q. About how fast was the the steamer ‘Homer’ going, in your judgment?”

A. As near as I could judge about six miles an hour, I should say.”

Captain Bryant testified (Record 231):

METCALFE: “Would not that be the proper navigation of the ship?”

A. Well, General, under your statement of facts, when he got his ship into that position, he probably done all he could to get her out, but he had no business to put her in there; the ship had too much headway on her; he was too near the landing before he turned his engines back.

Q. How do you know that he was too near?

A. By your statement; because he would not have got into that shape if she had not been.

Q. I said he rang his bells; he was coming under a slow bell with the port engine.

A. I understand exactly.

Q. And rang the bells a sufficient distance off.

A. Yes.

Q. She was four hundred feet—you know the size of the 'Homer?'

A. I understand all about the 'Homer;' I understand about her and her machinery generally. Your statement of facts, as you have related, led me to answer conclusively that the ship was too near the landing before you turned her back; that is the reason for it. If she was a ship that had heavy power in her to back her, he could have made the landing safely, but she has light power—she has but little power, the power is light, and the ship is heavy, and going in there—I do not know how the tide was, but I presume the tide was ebbing by your statement and the southerly wind, and he could not hold her; he could not turn her back because he was too near the landing, that is all there is to it. * * * ”

Captain Newhall testified that the Steamship "Homer" could turn right around almost in her own length with the port engine going forward and the starboard engine backing (Record 265).

Claimant, Captain Higgins, on November 22nd, 1899, testified (Record 373):

“Q. Well, with the port engine going ahead and the starboard engine going astern, within what distance would she turn?

A. She would turn inside of her length—that is, at right angles going this way she would (showing).

Q. Turn in what?

A. Her length.

Q. What is her length?

A. 140 feet. I docked her stern first many times this summer, and she would turn inside of her length?"

So that under appellant's own testimony the proof is conclusive that his vessel was within 140 feet of the wharf when he first undertook to turn her back, for if his signals were given and the engines operated exactly as they did, the vessel would have turned and there would have been no collision, so that Captain Bryant is perfectly right when he states from the results, that they showed conclusively that the Steamship "Homer" was too close to the wharf before the captain undertook to stop her, and on their own testimony convict themselves of negligence in this respect.

(5) The Honorable District Judge was perfectly right in finding the captain guilty of fault "in signaling the engineer to back the starboard engine without first actually knowing that his intended orders to back and reverse the port engine had been executed by the engineer" (Record 440). This finding is unimpeached by any testimony in the record and is, in fact, supported strongly by the testimony of Captain Higgins himself, who says: "When I struck the bells on the port engine I did not hear them plainly; I was not certain that I heard any, but thought I heard one" (Record 277).

Engineer McCarty testified (Record 309-10) that the port gong did not sound at all. That the only bells he got were the two bells on the starboard engine signifying to back.

Captain Higgins testified (Record 387-8):

"Q. And don't you know that if that bell cord hung

in the recoil in the manner you describe, that it took the life out of the pull from the handle?

A. Certainly.

Q. And you would have discovered that the very first time that you made the pull, readily, could you not?

A. I do not know as I get your idea.

(Question read to witness.) A. Well, I did not discover it.

Q. Could it be easily discovered?

A. I do not think easily or I would have discovered it.

Q. Don't you know that there is quite a strong pull in the recoil?

A. I understand the spring.

Q. Taking the handle back?

A. It pulls the wire back, I understand.

Q. You can feel the strength of that spring readily when you pull the handle of the bell-pull?

A. I think so.

Q. So that when you pull that to the top and it stopped and did not go back, the life would seem to be out of the handle?

A. Yes, I understand now, I understand what you mean. I am getting at it.

Q. You could have discovered that readily, could you not?

A. Well, I did not discover it.

Q. I know you did not, but that would be readily discovered by any person, would it not?

A. I do not think by any person, not with these slides that you pull. You might if you had seen it and stood right by it.

Q. Well, but from the feeling of the bell the second time you could see that there was no strength in the cord, or the recoil at all until it came to a dead stop; that is true, is it not?

A. Well, I have had lots of experience with bell-pulls, Mr. Martin, but I did not discover that until I went over the pilot house and looked and saw that thing hung up there. It was from the sound that I did not get, that I thought I ought to get, you know, that I noticed that there must have been some confusion somewhere."

Captain Bryaut (Record 221) says:

"Q. If the bell-cord had hung in its recoil and stayed in the position which Claimant's Exhibit No. 6 shows it to have stayed, could the captain, could he have discovered that fact even though it was not within his view when he pulled the bell-cord?

A. Why, certainly he ought to have discovered it.

Q. If it hung in that position, the bell-cord would not come back to its original place at all, would it?

A. It would not spring back.

Q. There is a spring to the bell-cord at all times?

A. Yes, sir.

Q. And the moment it would stick in its recoil the cord would have no life or vitality or spring to it?

A. No.

Q. That could be readily discovered, could it not?

A. Sure; no doubt about that."

Captain Newhall (Record 250) testifies:

“Q. I will ask you whether or not there is a recoil spring on the bell-cords and wires on steamships.

A. I never saw any that did not have.

Q. These springs bring the handle back to place, do they not, with some little force?

A. Unless something gets foul about them.

Q. Well, in case something gets foul, can you notice that from the pulling of the handle?

A. Sure.

Q. How would that manifest itself in pulling the handle?

A. It would stop; would not go back.

Q. It would take the spring off the wire, would it not?

A. Yes, sir.

Q. You could easily detect that, could you not?

A. Why, yes, I suppose so. I never failed to.

Q. Would it be probable, in case a man pulled the port engine bell-cord and that the wire passed through deck, through a pintle and cap, as represented by Claimant's Exhibit No. 6, and these other exhibits here, and the cap caught on the pintle as shown by Claimant's Exhibit No. 6, that the captain should again pull that bell-cord twice without discovering that it was caught and not going back?

A. I would not suppose so, sir. I would suppose that he was in doubt about it, and he must be if the thing failed to recoil that he would use his speaking tube or his whistle either.

Q. He could use either speaking tube or whistle, in case the bell-cord happened to get out of order?

A. Yes, sir.

Q. Just as well as the bell-cord?

A. Just as well."

Besides being able to determine from the pull of the bell-cords to a certainty that the gong did not sound, there was the return sound, whereby, had he been paying attention, he could have known to a certainty that his signals were not given on the port engine gong to the engineer. That notwithstanding this fact, with the vessel in the position she was in at the time, approaching closely to the wharf, he gave two signals to the starboard engine to back, when he must have known that the port engine was still going ahead, and if he did not, it showed such a degree of gross carelessness that no other conclusion or finding could be made than that made by the Honorable District Judge in his opinion, that such error cannot be excused by reason of an unknown injury to the pintle.

(6) The Captain was also guilty of negligence "in not giving attention to the helm, which is the means provided for controlling the course of a ship under way." The vessel could have been kept in her course easily had the man at the helm exercised any care whatever and used the only and the very means with which a vessel is provided for guiding and keeping her in her course. This he neglected to do, seeing the vessel changing from her course at a point and position where he must necessarily have been on the alert and should have been extremely attentive to the wheel to keep her in her course while she was in this position

and about to make her landing, and of which the Honorable District Judge says in his opinion (Record 439): "Furthermore, the bent pintle was not the sole cause, nor the proximate cause, of the accident. When the intended signals to stop and reverse the port engine failed, the vessel would have passed clear of the dock, and no harm would have been done, if she had continued on her course; there was no necessity for haste to back the starboard engine, and it was the captain's duty to control the movements of the vessel as to keep her from striking the dock or the other vessels moored there. If the captain had not ordered the engineer to start the starboard engine backward before the port engine had been stopped and reversed, and if he required the man at the wheel to use the helm so as to keep the vessel from swinging to starboard, she would not have gone out of her course, and the accident would not have happened."

Captain Higgins testified (Record 373):

"She was outside of the line of the dock, I should judge, fifty feet, as far off as was convenient for her to be in order to make the landing at the end of the dock and all of two hundred feet, I am confident, south of Schwabacher's wharf."

(7) Even though the pintle got out of order in the manner in which the Appellants claim it did, it would be no excuse whatever for the accident. The vessel is provided with a double set of bell-cords, so that had the Captain acted seasonably and exercised reasonable care he could have made a landing without any difficulty

whatever. Besides he also had the whistle, the cord of which was right at his hand at the time. He also had the speaking tube.

Captain Bryant says (Record 224) that "A bell-cord cuts no figure with landing a ship with safety. Suppose all the bell-cords had got out of order, there is other ways of communicating with the engineer to direct him whether to back his ship or go ahead. I do not think a bell-cord cuts any figure in landing a ship, Oftentimes bell-cords will part in going into a dock, and they have the speaking tube to communicate with the engineer on watch and direct him which way to work the engine, whether to go ahead or stop, or back full speed, or go ahead full speed. And if he has not a speaking tube he can do it with a whistle."

Captain Newhall says (Record 252):—

"Q. In case the captain of a vessel, such as the Steamship 'Homer' is, was making a landing at a wharf—say Schwabacher's wharf in this city—and the bell-cords caught, as indicated by Claimant's Exhibit No. 6, would that necessarily embarrass the captain in the least in making a good and proper landing?"

A. I do not see why it should.

Q. If he had been at his proper position, he could immediately have used the speaking tube, could he not?

A. I suppose so, yes, sir; sure."

So that under the uncontradicted testimony of these witnesses, who are old experienced captains, the fact that the bell-cord hung in its recoil, if it did do so, as

claimed by appellants, would be no excuse whatever for the collision.

(8) Captain Higgins also showed poor seamanship and was guilty of negligence in endeavoring to make a landing with the signals that he states he intended to give. Instead, he should have signaled the starboard engine to go ahead and backed the port engine, which would have been the proper way to land a twin-screw vessel, and would have prevented the vessel from striking or turning into the dock.

Says Captain Newhall, who has had many years' experience with twin-screw vessels (Record 259), on cross-examination:

"Q. Supposing your ship, a twin-screw vessel, such as you say you know the 'Homer' to be, was proceeding along under a slow bell—say at the rate of about three miles an hour—the port engine working, and you desired to stop your boat or stop your engine with a view that the boat might slide into the wharf, at the end of the wharf, by the speed that was on her, what would be your first order as captain?

A. Let me see. I would not have been going ahead on my port engine under these circumstances.

Q. Now, these are the conditions, and what would you have done—the port engine was working slowly—now, what would be your first act?

A. I would stop the port engine and back it and go ahead on the starboard engine."

There can be no question but what this would have been the safer method and course for the Claimant to

have pursued, and if he could have done so without any greater effort or inconvenience than to run his vessel by the port engine when there was more likelihood of an accident happening, as it did happen in this case, than if he had been running the starboard engine, it was surely negligence not to have pursued the safer course.

The George H. Dentz, 12 Fed. 490.

(9) Claimant was also guilty of negligence in failing to give any danger signal or warning to Libellant or those on board the Brigantine "Blakely" when he discovered that he had lost control of the Steamship "Homer" and that there would be a collision with the "Blakely."

Captain Higgins testifies (Record 401-2):—

"Q. You could see the "Blakely" very clearly, Captain from your position? A. Very clearly.

Q. Immediately prior to the collision?

A. Yes, sir; immediately prior to the collision.

Q. And the bulwarks of the "Blakely" are not so high but what you could see a man on deck, are they?

A. Not if I looked for him.

Q. Then the reason that you did not see the Libellant on deck of the "Blakely" is because you did not look? A. No; you understand I did not look particularly for anybody.

Q. You did not look for anybody? A. No, sir.

Q. But if you had looked you no doubt could have seen him?

A. Well, I do not know any thing about that. I only know that I did not notice anybody.

Q. And you did believe that there was a possibility there of a collision shortly before you collided?

A. A possibility; yes.

Q. And you know, as a Captain, that there is always someone on a vessel of that size?

A. Well, if anybody had asked me if I thought that there was a man there, I would have told him there probably was.

Q. Then why did you not give a danger signal for the purpose of warning anybody of danger when you were coming in that manner?

A. It did not occur to me that anything of the kind was necessary; the vessel that I had was swinging quickly, and I was in hopes that she would swing clear of the "Blakely," or pull up, you see.

* * * * *

"Q. If you had blown your whistle you would have given warning to the people who were on the vessel, would you not?

A. Probably they would have heard it. I should judge they would.

Q. The cord of the whistle was right at your hand while you were standing on top of the pilot house?

A. Near by.

Q. Within reach of your hand?

A. Within reach of my hand."

So that under any possible view that can be taken of the defense made by Appellants, they would be clearly liable for failing to give Libellant warning of their approach so that he could flee from the seat of danger,

knowing that they had lost control of their vessel and that there would be a collision, and were guilty of the grossest kind of negligence in not giving Appellee warning of the impending danger, so as at least to have given him a chance to save himself, when it would have required no effort on their part to have given a few blasts with the whistle.

Inland and Seaboard Coasting vs. Tolson, 139 U. S. 551.

(10) It is a well-settled law of navigation that collisions are always to be avoided whenever it is practicable to do so, and when a collision occurs because the proper precautions were not attempted earlier, it is no defense to show that they were attempted as soon as the necessity for precaution was perceived, nor to prove that at the moment of the collision it was too late to render such precautions of any service; precautions must be seasonable.

The Johnson, 76 U. S. (9 Wall.), 146.

The Vanderbilt, 73 U. S. (6 Wall.), 225.

Union Steamship Co. vs. Virginia Steamship Co.

24 How. (U. S.) 307.

A vessel must allow sufficient margin for the contingencies of navigation in undertaking to avoid another vessel, and must take decisive measures in time.

Wells vs. Armstrong, 29 Fed. 216.

Homer Ramsdell Transportation Co. vs. Campagne Generale Transatlantique, 63 Fed., 845.

The Steamship Pennsylvania, 24 How. (U. S.)

307.

The burden of proof in establishing the defense of an inevitable accident is upon the appellants. They must satisfy the court by convincing proof how the accident occurred, and that they were not in fault and that no act of negligence or omission on their part could have contributed to bring about the accident.

The Helen R. Cooper Fed. Cos. No. 6334.

The Steamship Pennsylvania, 24 How. U. S. 307.

The Oregon, 158 U. S. 186.

Granite State 70 U. S. (3 Wall.) 310.

The City of Lynn, 11 Fed., 339.

The Brady, 24 Fed. 300.

The fact that a vessel propelled by steam runs into a schooner properly moored at a dock, is sufficient proof of fault on her part, and it rests with the steamer to exonerate herself from all fault, and in order to avoid liability must show that the greatest caution and vigilance were observed, and ordinary care under such circumstances will not relieve the boat which commits the injury from responsibility.

Mills vs. The National Holmes, Fed. Cas. No. 9613.

Guthrie v. City of Philadelphia, 73 Fed., 688.

We submit that on these questions of negligence, which are clearly established by the proof, that the Honorable District Judge's finding, being a finding of fact, should be decisive and conclusive upon these matters and binding upon this Court.

II.

(1) Appellants' next charge, that Appellee's injuries were caused by his subsequent acts, which were the proximate cause of his injury, has no support whatever in the testimony, which clearly shows that Appellee acted with the greatest diligence that a man could possibly exercise in endeavoring to escape injury and protect himself. Counsel's argument under this heading consists in endeavoring to twist and misrepresent the true facts shown by the evidence.

Witness Waldron testified (Record 96):

“Q. Did you start to run before you yelled, or did you start at the same moment?

A. I started—I was running when I yelled, and just made a jump.

Q. What was Newman doing at that time?

A. He was in this position (showing), boring.

Q. Was he stooping over?

A. He was in a stooping position.

Q. About how far was he behind you when he started to run?

A. Well, I passed him four feet.

Q. When he started.

A. Yes, sir.

Q. Was there a very long time intervened between the time that you hollered and the time that Newman ran? A. No, sir.

Q. About how quick was it?

A. Well, I could not say how quick it was. It was short.

Q. State whether it was almost instantaneous or whether there was a space of time in there.

A. It was almost instantaneous.

Q. (Mr. Metcalfe.)—Were you standing further aft on the vessel than Newman was?

A. I was standing—no, I was not any further aft; I was just about the same distance aft.

Q. How was it you could run past him and run four feet before you did pass him?

A. I was standing on the outside corner of this hatch talking to him, and he was working in the center of the hatch."

(And on Record 95)—

"Q. What was there at that time that attracted your attention particularly to the Steamship 'Homer' coming in?

A. That was probably the loom of her alongside, more than anything else.

Q. Now, then, when you saw her she had not struck?

A. She was just—she struck just as I jumped; she had not struck at the time I seen her.

Q. But she struck at the time that you hollowed to Newman?

A. No; she was just striking as I hollowed to Newman.

Q. You hollowed to Newman? What did you say to him?

A. I do not remember what I said to him. I said 'look out,' or 'get out of the way,' something.

Q. Now, you started to run?

A. I was running then.

Q. What did Newman do?

A. The last I seen of him he was just turning to follow me, as I thought.

Q. He did not run at all?

A. Well, he was not running when I—at that time he was just turning when I seen him.

Q. Did you not see him running to get his coat or some of his tools? A. No, sir.”

(And on Record 99)—

“Q. Now, then, when you first saw the ‘Homer,’ did not you hollow out to him? A. No, sir.

Q. What did you not?

A. Because I had not time; I hadn’t time; I made a jump.

Q. When you turned and looked at the ship, and saw her coming there, you did holler out to him, then?

A. No, sir.

Q. Why did you not holler out?

A. I was too badly excited. I was thinking of my own safety.”

Mathew Anderson testified (Record 200) that he was working on the hatch with Newman; that he ran on one side of the hatch and Newman on the other; and testified (Record 202):

“Q. Did the captain of the ‘Homer’ give you any warning of her approach by blowing his whistle?

A. No, sir; not that I could hear.

Q. So that you had no warning of danger, before it was right on you, did you?

A. Not any warning until I heard things commence to rip and tear. For my part, I never look out for any warning from a steamer or anything coming around, because they ain't supposed to run into you. They come sometimes and rub right up against you. I never think of anything like that; so if I had seen her come I would not have thought of it."

And on cross-examination (Record 202-3-4) testified:

"Q. How far were you from Mr. Newman when the 'Homer' struck the 'Blakely'?

A. About six feet at that time.

Q. On which side of the ship?

A. On the starboard side. The starboard side was out and the port side up against the wharf.

Q. Did you start to run before the 'Homer' struck?

A. No, she was — I just heard things commence to tear as I ran.

Q. Now, did you not turn around and see the 'Homer' before she struck? A. No, sir.

Q. Did not? A. No, sir.

Q. Did Mr. Newman begin to run before the ship struck?

A. He started to run just about the same as I did.

Q. I ask you if he started to run before the ship struck?

A. Well, it might have been a second before.

Q. Did you start to run before the ship struck?

A. No, sir.

Q. You saw Newman running, then, before you ran; is that it?

A. Well, I think I ran first.

Q. You think you ran first?

A. Yes, sir.

Q. What did you run first for if you did not see the ship? You only ran after you heard the collision, did you?

A. Well, her masts then were striking, that is what tore out this yard arm, and then the ship herself commenced to tear.

Q. You think you ran before Newman did?

A. Well, probably a second or a half a second. A second is very long when you do not know where to run to. That is the way I concluded. I did not know whether to try to jump overboard to get out of the way, or—" Appellee testified (Record 128):

Q. How far, then, had you run before you were hit, as you claim?

A. I will tell you: the hatch is six feet by eight feet—eight feet long and six feet across the beam; well, I must have run kind of angleways there to get between the mast and the hatch, I was on the starboard side—I must have run close, somewhere, to seven feet, seven or eight feet, I ain't particular, I ain't sure, but somewheres about that; but I was past the main mast when it struck me; I had my hand against the main mast when I run by, I pushed myself, and she struck when I ran; that kind of knocked me against the main mast, and I pushed against the main mast to get quicker away from it; that is the way I remembered the main mast; I pushed from the main mast with my hand toward the port side to get further away.

Q. How far of, Mr. Newman, was the steamer from the brig at the time that this fisherman 'hollered' to you?

A. When I turned my head around she was close up, sir; when I looked up there was the bow right there, and when I looked up, when I seen the man 'hollering' in the ventilator, my mind struck me like there is danger, and I ran.

Q. You do not know anybody who was around there, do you? A. No, sir.

Q. You do not know anybody who spoke to you?

A. Not at the time. I had my head down at the time, fastening a piece of wood down, sir."

And on redirect examination (Record 141) testified:—

"Q. Did you attempt to get out of the way of any danger immediately upon discovering the Steamship 'Homer' coming at the Barkentine 'Blakely'?"

A. I never looked around to see what boat it was; I simply grabbed my coat and ran.

Q. You got away as quick as you could, did you?

A. As quick as God ever let me. If I was not a sailor I might have stood and looked at her, but when I seen the man at the ventilator, that put me on my guard that there was danger.

Q. You say you grabbed your coat? A. Yes, sir.

Q. Did it take any length of time to stop to grab your coat?

A. Well, about as long a time as you would say 'Jack,' because it was right at my feet where I kept it; it had a two hundred and thirty-four dollar check in it,

in my time-book in my coat pocket, and I just took it off about half an hour before that and laid it right in my shoulder box that I unshift my bits and every thing in, and it was right there where I worked; I simply grabbed it; there was nothing to stop me at all, simply reach my arm down and reach my coat and run down; if it wasn't for the two hundred and thirty-four dollar check I don't know that I could have taken it, but I wanted it safe for that.

Q. It did not delay you in getting out of the way, did it? A. No, sir."

Under such testimony, which is all the testimony there is upon the point, it does seem idle to waste further time in answering to Appellant's charge of negligence against Appellee. It comes in poor grace from Appellants to say that Appellee was not sufficiently active to escape being injured, when they took no steps whatever to warn him of the danger he was placed in by reason of their gross carelessness, which they could have done without any effort whatever by giving a danger signal when they knew that their vessel was beyond control and was going to crash into the "Blakely." The Honorable District Judge's findings in this respect are fully supported by the evidence, correct, and should be treated as conclusive.

III.

Appellants' next contention is that the collision did not cause the injury, and that Appellee was not injured by the collision. The testimony is conclusive that Appellee was injured by the block and pendant being

torn loose and hurled by the force of the collision against the Appellee.

Witness Brown, who was standing on the dock at the time of the collision testifies (Record 101-2):

“Q. What, if any, part of the rigging did you see broken or torn or carried away?

A. Oh, well, there was chain plates that was broken and one of the —, I forget the name of the rope; I was standing there looking and it seemed to be pretty well all broken, at least, all torn loose.

Q. Did you see anything drop from aloft?

A. I see the block coming down, and the end of the block and the wire rope on it, or wire cable.

Q. Did it come down with much force?

A. It came down like—the same as you would strike a whip. Then I started to run myself.

Q. Did you see whether or not that struck Newman?

A. No, I did not. I started to run when I saw that.

Q. Did you see whether or not that was lying here where Newman was lying? A. Lying right by him.

Q. That was immediately after the accident?

A. Yes, sir.”

Appellee testified, on cross-examination (Record 131-2):

“Q. When you were hurt did you fall forward on your face, or did you fall on your side, or how?

A. It knocked me right down, sir; right flat on my face, sir.

Q. Then what did you do after you were knocked down?

A. When I opened my eyes I remember seeing fire at my eyes, and then black before my eyes, all black; well, when the black went away it was in my mind she was sinking.

A. The boat, the 'Blakely.' It was in my mind she was sinking, and I wanted to jump quick up and make for the wharf, and I raised my shoulders up and my lower part refused; my back was just like broke in two, and I couldn't handle it at all, and I hollered right away to take me on the dock.

Q. You did not know of your own knowledge what struck you, Mr. Newman?

A. Yes, sir; the block there, sir, next to me.

Q. No, I asked you if you knew of your own knowledge what struck you?

A. Of my own knowledge?

Q. Yes. You can't personally testify to what did strike you; all you know is just a mere supposition, is it not?

A. All I know is that when it struck me it covered my back, and the block, when I opened my eyes, it was right close to me, when I turned my head.

Q. Yes; but you do not know what struck you, you cannot testify positively to what struck you, can you? You only suppose it was the block?

A. Well, I didn't see what struck me when it struck me; I was running for the wharf and that struck me in the back.

Q. Whatever struck you struck you in the back, but you did not know what struck you at the time?

A. Well, the block was there next to me, and I supposed that struck me.

Q. That is, you supposed it was the block, you do not know it?

A. That is the only thing I know. I was knocked down and when I opened my eyes that block was there.

Q. You saw the block there?

A. Yes, sir; close by me.

Q. But you cannot testify of your own knowledge, that the block struck you?

A. Well——

Q. That can be answered "yes" or "no."

A. Well, I don't know about that; I don't know about that because it was a big piece that struck me; it was a big piece, I can swear to that; it was a big piece.

Q. You simply know that something struck you?

A. Something big; yes.

Q. And you do not know what that was?

A. Something big struck me.

Q. But you can't tell what it was?

A. The only thing I can tell, the block was next to me.

Q. I understand; but can you tell, can you testify, what it was? You simply know that something big struck you and that is all?

A. Yes, and the block laid right alongside of me."

Mathew Anderson testified (Record 200-1):

“Q. Now, did you see Mr. Newman when he got hurt?

A. He was about six feet off from me.

Q. From you? A. Yes, sir.

Q. Did you see him struck with any timber or block, or anything?

A. No, I did not see him exactly struck, but I seen—I heard the crack of the pendant just as I ran, and I turned around and looked on the deck, and there he was about four or five feet that side, and this block lying right alongside of him and he was down on his knees, and I know that the block fell there, and I could not see no mark on the deck that that block would have made if it had struck the deck. We were working on what we call the scuttle about the hatch. I was working about this end of it and he was working there (illustrating), putting on some slags, when the thing happened. I ran on this side and he was trying to get away on the other side, between that and the mast. And I looked behind me when I heard the end of this pendant strike the deck and the rail; the end hung on the rail—the end that came off of here; and the distance from this rail to this hatch was about eight feet.

Q. Now, was Mr. Newman knocked down?

A. Yes, he was knocked down.

Q. Did they have to help him up? A. Yes.

Q. What, if anything, did he say at that time?

A. He says, “My back is broke.” He says, “Anderson,” he says, “take care of me.” That is all he said. I says, “We will do all we can for you.” Then

I went and called one of the crew to help me as quick as he could to get him on the dock. The tide was low and I could not get him up there alone. I got three or four of the boys there."

And on cross-examination testified (Record 205):—

"Q. You saw nothing strike Mr. Newman?

A. I did not see it strike him, but I heard the thing falling, the wire falling along side of him, and I asked—

Q. I asked you whether you saw anything strike Newman. You can say "Yes" or "No" to that question.

A. No, sir; I did not see it strike."

And on redirect examination (Record 205):—

Q. But you saw the block right by him immediately after he fell? A. Yes, sir.

Q. Or at the time he fell? A. Yes, sir.

Q. And the place where the block naturally belonged was away up on the mast? A. Yes, sir.

Q. It was about the only thing you saw fall down there right where he was?

A. That was the only thing that fell down from aloft anywhere.

Q. That was the only thing that could have hit him in the back, was it not, was the block? A. Yes."

Witness Waldron testified (Record 92):—

Q. What did you see there?

A. I seen the forebrace pendant and block lying across the deck when I went to help Newman. It was lying right by the side of him, and it was closer to the

mainmast than it was to the rigging, lying in that shape across the deck.

Q. Was there any part of the ship lying there that had been torn loose besides that?

A. There was a broken brace.

Q. Did Mr. Newman seem to be suffering much pain?

A. He seemed to be suffering considerable pain. There was tears running out of his eyes. When we got him on the dock he was lying there moaning, and he kept telling us that he was hurt.

Q. He had been hurt? A. Yes, sir.

Witnesses Roberts (Record 115-118), Dodge (Record 106) and Gregg (Record 110) all testify to substantially the same as Anderson, Brown and Waldron, to the effect that the fore yardarm brace and block were torn away, which was about 45 feet above the deck of the "Blakely," and was lying right beside Appellee immediately after the collision, and that those were the only parts of the vessel lying close to Appellee. So that under the evidence the charge of Appellants that it is mere supposition on the part of the Appellee and his witnesses that he was hit by the block, is contrary to the evidence of all of these witnesses, and has nothing to rest upon, except the testimony of Claimant's witness Gilbertson, who testifies that although the block and pendent were torn loose from their bearings and fell on the deck of the "Homer," still when the "Homer" backed off they were drawn overboard and fell into the water. While seven witnesses testify positively that the block and pendent fell on the deck of the "Blakely" and lay

right by the side of Appellee immediately after the collision.

IV.

It is next urged by Appellants that the Appellee was not seriously injured; that his injuries are not of a permanent nature. The manner in which the Appellee was injured shows conclusively that the injury was of an exceedingly severe and serious nature. The evidence shows that he was injured by a large block striking him in the small of the back, which was torn loose from its bearings at least 45 feet above the deck; that ropes passed through the block, running to the rear, and great force was exerted upon these ropes which tore the block and pendant from the fore-yardarm, so that they were thrown with tremendous force against the Appellee, and the only wonder is that he was not killed.

Witness Gregg testifies (Record 110-11):

“Q. What condition was Mr. Newman in?”

A. He was lying with his hand like that (showing) on his side, and as we picked him up he fell through our hands kind of and against the rail there, and we picked him up again, three of us, and hoisted him to the wharf; and from the wharf we took him in the office on Schwabacher’s dock. He was hurt pretty bad, because the tears came out of his eyes.

Q. State whether or not Newman appeared to be hurt very much or not, or injured very much?

A. Well, he acted very much like it by his crying. If a man is hurt very bad the tears come in his eyes; I know I would.

Q. Did you see an expression of pain in his face?

A. Yes; it was very pale, indeed.

Q. Did he moan much? A. Yes, sir.

Q. Was he able to walk, or did you have to carry him? A. We had to carry him."

Witness Roberts testifies (Record 115):

"Q. State whether or not he (Newman) was injured, and if so, to any extent?

A. Well, he seemed to be suffering with great pain across the small of his back; he could hardly move after I got him onto the dock, or into the office on the dock; we laid him with his face down on the bench, and one leg was hanging off, and he could not get that leg back on the bench again, and I had to put it back for him.

Q. Did not seem to have any control over his legs?

A. No, sir.

Q. Seemed to be paralyzed, his legs?

A. Well, he seemed to be paralyzed."

And on cross-examination testified (Record 117):

"Q. I understood you to say a moment ago, that after you took him on the dock and then took him to the office that he put one arm around your neck and the other arm around another fellow's neck?

A. Yes, sir.

Q. And walked along with you to the office?

A. Well, he kind of dragged himself along.

Q. He lifted his legs as he went along?

A. Yes, he moved them somewhat, but he bore no weight on them.

Q. He leaned on you and walked himself, walked on his legs. He stood on his legs, didn't he?

A. No, he did not stand; we just kind of dragged him along. Of course he moved them some, but he dragged them along.

Q. You mean he walked slow, and moved one after the other, didn't he?

A. Well, I couldn't say about that exactly, whether he moved one after the other or whether it was more of a drag; it was more of a drag than anything else.

Q. Did he drag both feet?

A. Part of the time he dragged both feet."

Witness Brown testified (Record 101):

"Q. What condition was he in at the time?

A. He claimed he was hurt pretty bad. He says, "For God sake, boys, take me on the dock."

Q. Did he seem to be suffering any pain, and to what extent?

A. Well, he seemed to have tears in his eyes when he was taken on the dock.

Q. Was he moaning any? A. Yes, sir.

Q. Making any outcries of suffering?

A. White around his lips; oh, yes, and seemed to be in pain.

Q. State whether or not he was in a helpless condition. A. He was.

Q. Was he carried on the dock?

A. He was carried on the dock and then carried into the Schwabachers's office there."

Witnesses Waldron (Record 93) and Dodge (Record 107) testified substantially to the same effect.

Appellee testified (Record 124-5):—

“Q. State whether or not you have suffered any pain from your injuries, and, if so, to what extent?

A. I am suffering every day, only I am a little easier now; but the first three weeks, first four weeks, I suffered pretty bad, but the last few weeks now I feel a little easier; I can't be moved; if I am moved a little bit the pain comes back as bad as ever, but if I am left very quiet, like now, my pain eases down.

Q. Have you been able to sit up any since you were injured?

A. No. I can't lay on my side, even; I have to lay on my chest, that way, on the pillows, and when he wants to lay me around he lifts up my head a little and shifts me just a little, to leave the weight on the other side.

Q. Can you turn around without assistance?

A. I can't handle my lower part; I can handle my shoulders, my arms, but I can't handle my lower part at all; everything goes to the back just as soon as I put a little strain on my back; I can't handle the thing there; that is as bad as from the first minute when I was hurt—the lower part; from where the pain is in my back upwards to my shoulders is easy.

Q. How long did you remain in the hospital?

A. Three weeks to a day.

Q. How long have you been over here at your home?

A. This is the eighth week. It was seven weeks on Wednesday that I was hurt, and this is the eighth week.

Q. What was your age at the time you were hurt?

A. Well, I was born in 1862, the 18th of February, so you can figure it out.

Q. State what was the condition of your health prior to the time you were injured.

A. I was as healthy as I could be; I never wish to feel any better in my life."

And testified (Record 126):—

"Q. You may state whether or not you will ever be able to follow your work again.

A. No, sir. My work is all back work; I will never be able to do any more carpenter work; I might do some light work by not bending, or anything like that, but not ship carpenter work; it is all heavy work, and your back has the main strain in ship work."

Witness Thomas who was appellee's nurse, testified (Record 144-5):—

"Q. Have you seen Mr. Newman lately?

A. See him every day.

Q. State whether or not you have been employed by him to wait on him. (Objected to.) A. Yes, sir.

Q. Go ahead and state what you have done with reference to taking care of him. (Objected to.)

A. Well, I started on the 19th of May, and I lived in about thirty feet apart; I stayed there a considerable, but I was either there or in my own house continually. What I was doing was attending to him, turning him and attending him with a bedpan and urine and so on. That was my business.

Q. State whether or not he was suffering a great deal at the time you started to wait on him. (Objected to.)

A. Yes, sir; especially when I would be moving him, turning him, you know, in the bed; and the worst of the whole of it, I guess, was the bedpan; it broke him all to pieces.

Q. State what kind of food he subsisted on.

A. Well, Mrs. Newman was attending to that principally, but the first month he subsisted, I think, entirely on milk, because I was—

Mr. Metcalfe—"One minute—."

And testified (Record 147):

"Q. Now, how about making his water?

A. Well, he was suffering a great deal; his urine is very troublesome.

Q. State whether or not he suffers at the present time a great deal.

(Objected to.)

A. Well, yes.

Q. State what the condition of his water is when it passes from him.

A. Well, his water is bad, undoubtedly. I sent over here Saturday to the doctor to get something again for him; and there is a good deal of sediment in it.

Q. State whether or not he has control over his water, in making his water, and over his bowels, or whether they have to administer to him.

A. In regard to his bowels, he has to take some physic continually to operate them.

Q. State whether or not he has use of his lower limbs.

A. Well, he has no use at all."

And on cross-examination testified (Record 150):

"Q. Don't say what you think. I want it from your personal knowledge. How about Mr. Newman's being able to turn over; can he turn in the bed at all?

A. Not by himself.

Q. Can he draw his feet up at all?

A. No, he cannot draw his feet up. I have to move his limbs and take all of him, you know, by here and the legs. (Illustrating.)

Q. When he wishes to, cannot he use them—that is, draw them up a little bit?

A. I have not seen him at all; I do not think he can, because—

Q. You have never seen him try, have you?

A. Yes, sir; I have seen him try. He is trying every time he is helped, to a certain extent.

Q. Does he complain of much pain?

A. Well about the time he gets on the bedpan; to get him on the pan and off, that breaks him up entirely, even now; it was terrible at first."

DR. MILLER, attending physician, testifies (Record 168, 169, 170):—

"Q. Yes. I will now ask you to go ahead and state the facts concerning his injuries.

A. When I was called to see him I found him in the Providence Hospital, lying in a bed, No. 15, I think—room 15. On examining him I found that he was lying partially on his face, with his face down; his legs partially extended and supported by a pillow. On looking

over his body I observed considerable discoloration of the skin over the fourth and fifth lumbar vertebræ; and it was at this particular spot of which he claimed he was suffering very greatly. On attempting to make him draw up his legs, in order to discover whether there was any injury or not, I found that titillation of the soles of his feet and other measures besides the issue of a pin seemed to have no effect upon him. The legs remained straightened out and perfectly helpless. The following day he suffered retention of the urine; and, if I recollect, I think on two or three subsequent occasions after that he passed his urine with more or less suffering. I attended him daily at the hospital from the 1st until about the 15th of May, at which time he went home. He was carried home on a litter and I made four or five or six visits since. He is now just as helpless as he was when I first saw him; still lying practically on his face, though occasionally he finds it easier to lie on his back.

Q. I will ask you whether or not he has any control of his lower limbs. A. None at all.

Q. I will ask you if you have made any examination, Doctor, for the purpose of determining whether or not his injuries are likely to be permanent.

A. Yes, sir, I did.

Q. I will ask you to state whether or not they are likely to be permanent.

A. It is more than probable that they will be permanent, although there is a possibility—a bare possibility—of his regaining more or less of the use of the limbs, but it is a question if he will ever be able to walk.

Q. I will ask you if you have made any examination lately with reference to his power over the muscles of his legs? A. Yes.

Q. I will ask you whether or not he has any power over them? A. None at all.

Q. I will ask you if you can state the extent of the injury to his spinal column or the lower lumbar vertebræ?

A. The clinical conditions which I observed would indicate that the branches that emerge from the lower portion of the spinal cord are crushed.

Q. That is the nerves extending out from the lower end of the spinal cord? A. Yes.

Q. In case that is the manner in which he is injured, is there any likelihood, even, of his ever having the use of his lower limbs?

A. It is barely possible, but not probable.

DR. WOTHERSPOON testified (Record 188-9):—

“Q. Now, what would you say was the cause of his lack of control, Doctor, over his limbs—the lower part of his body?

A. Some injury to the motor roots of the lower lumbar nerves and the upper sacral nerves, or some injury to the lower end of the spinal cord itself.

Q. No other thing could produce that result, could it, that you found in his condition? A. No other thing.

Q. Nothing else could produce that result?

A. Not that I have ever heard of, under the circumstances.

Q. Did you notice any discoloration on his back when you first examined him?

A. There was a faint, yellow discoloration in the lumbar region on the 28th of May. It was the last disappearing trace of the discoloration; that I asked at the time.

Q. I will ask you whether or not, in your opinion, he will ever be able to use his limbs so as to get around and follow his previous occupation of ship carpenter?

A. He might recover. He may be able to use his limbs yet. That is a question that I could not answer very definitely.

Q. Well, about what would the chances be?

A. I could not even estimate the chances, because I do not know the amount of injury to the nerves or spinal cord.

A. Well, does the amount of injury indicate itself to any great extent in the condition you find him in? Would it not necessarily be a serious injury to produce his condition?

A. The amount of improvement in two months is so very little that at the same ratio he practically could not be well at the end of his life. The injury, as he is at present, is very severe, and if he does not continue to improve at a more rapid pace than he is at present it will be a long time before he is well, if he ever is.

Q. If he ever gets well? A. If he ever gets well.

Q. Are not such injuries to the spinal column and cord about the most severe injuries to the body?

A. They are always serious injuries.

Q. And the most difficult to recover from?

A. Yes; they are among the most difficult ones."

And on cross-examination (Record 192-3-4):

"Q. Then, what did you determine was the matter, or have you yet been able to determine what the matter was?

A. You mean the actual pathological lesion?

Q. Yes.

A. That is, the internal disarrangement of the nerves and the spinal cord?

Q. Were you able to determine that?

A. I could not determine that.

Q. Could you have determined that by a surgical operation?

A. I do not know whether I would have nerve enough to cut deep enough to absolutely determine that, unless he was dead; because in that condition I would have to cut through the entire section of the sacrum, and as the sacrum at that point is a very vital thing for the good and the support of a man's body; I could not do it because it would destroy the perfect sacral—what we call the perfect sacral bones here, of which the sacrum is the keystone point, and as the nerves emerge in front of it or in the true pelvic cavity, the only way I could get in there from behind would necessitate cutting through the entire thickness of the sacrum, and of course it is absolutely ridiculous.

Q. Do you mean to say that you would have to cut as deep as that to ascertain where this injury is?

A. Yes; I might have to cut at least over two inches.

Q. You might have. Now, how do you know you would—you have not made that examination?

A. Well, I have dissected a great deal in subjects.

Q. Well, I know, but I do not mean—I am not testing the question of how thick the incision would have to be, except that you have made none at all to ascertain the fact of where the injury was.

A. Well, we have certain evidence in this man, from the nature of his injury, that can only arise from an injury to the nerves or the spinal cord.

Q. Now, which is it?

A. The nerves or the spinal cord?

Q. Yes. A. Well, I cannot absolutely say; maybe both, maybe one, or it might be the other.

Q. Then you really do not know today whether it is one or both? A. Maybe both.

Q. I ask you whether you know today after three months' examination of the man, or having examined him three times, you do not know today whether it is an injury to the spinal cord or the spinal nerves.

A. I know it is one or the other.

* * * * *

Q. Then your reasons, as given here, are to a certain extent speculative, are they not? A. Which reasons?

Q. The reasons for what his real injury is?

A. No, they are not speculative; there is a distinct lesion either in the nerves or spinal cord; that I am certain of.

Q. Well, which is it?

A. As I said before, I cannot answer absolutely which it is. It is one or the other."

The manner in which Appellee was injured was such as to almost of necessity cause injuries which if not fatal would surely be of a permanent nature. The condition in which Appellee was taken to the hospital and was in for months afterwards, shows clearly that there could be little, if any doubt as to the permanency of his injuries, and that he will be a cripple for life. The Court's findings in this respect is supported by the evidence, correct, and, being a finding of fact, should be conclusive upon the subject.

It is next urged by Appellants that Appellee and his proctors have refused the Appellants permission to have a medical examination made of Appellee by such physicians as Appellants saw fit to choose, and that Appellee and his proctors have prevented Appellants from making such an examination for the purpose of covering up the truth. This charge is made in bad faith by proctors for Appellants, and is known by them to be untrue, and is made for the sole purpose of endeavoring to cast a cloud upon Appellee's claim against them. Proctors for Appellee, after consulting with Appellee, notified proctors for Appellants on September 25 that they could make a medical examination of Appellee if they desired, as shown by the Record (page 366).

“Mr. MARTIN.—At the close of the testimony on Saturday, Mr. Metcalfe, the proctor for the claimant, requested or asked me if the libellant would consent to a medical examination on behalf of claimant. At that time I had not spoken to libellant about the matter; as it would necessarily cause him considerable pain, I did

not feel that I would be justified in binding him to any such agreement at that time. I have seen him since and he states that he is perfectly willing to undergo a medical examination by any reputable physician, or more than one reputable physician—as many as claimant wishes—at the same time, in case the claimant desires to have such a medical examination made. On behalf of libellant, as his proctor, I request the claimant, if he wishes to have such a medical examination made, to name one or three physicians at this time, and we will have these physicians subpoenaed to appear here Thursday afternoon and testify; and in the meantime they can go and make the medical examination of libellant. I desire to have the testimony in and closed so as to be filed Saturday.

MR. METCALFE: You were to inform me, when I requested, if you were willing that that should be done. I have now to see some reputable physicians and ascertain whether I can procure their services so as to testify which I will endeavor to do in the most convenient manner and time. I formally give notice that I do not expect this case to be closed by the 30th of September. I have other witnesses.

MR. MARTIN: We have no objection, but we do insist that the examination take place tomorrow, or Wednesday or Thursday of this week. The libellant is here at West Seattle, within easy reach, and I do not want the case dragged out any further."

On the 22nd of September an affidavit was filed by William Martin, proctor for Appellee, asking to have

the testimony returned which was taken and reduced to writing by the commissioner, as proctors for Appellants had taken no steps to take any further testimony or to have a medical examination made, although requested frequently by proctors for Appellee to do so. The same was brought on for hearing before the Honorable District Judge on the 30th of September, and on the affidavit of William Martin (Record 68), setting forth these facts, and the affidavit of J. B. Metcalfe and George Fritch (Record 57 and 64), the court refused to require the commissioner to file the testimony. And upon said hearing proctor for Appellee consented in open court to have the court name such physicians as it desired to have make a medical examination of Appellee, to which proctor for Appellants objected, and refused to permit the court to name any physicians to make a medical examination, and also refused to name any physicians themselves.

In the affidavit of J. B. Metcalfe (Record 62) he swears that he could have all his testimony taken and his medical examination made by the 1st of November, 1899, or during the first week in November, 1899. Notwithstanding this, the Appellants refused to take any steps toward having a medical examination made thereafter, although frequently requested to do so by proctor for Appellee, in case they desired to have a medical examination made.

The case dragged along from September until in November, when Appellee again applied to the Court for an order fixing the date upon which Appellants

must complete their testimony and within which they must make a medical examination in case they desired to have one made. An affidavit was made by William Martin, proctor for Appellee (Record 408), setting forth all the facts, which were uncontradicted. That thereupon proctor for Appellee procured an order from the Court, fixing the 15th day of November, 1899, as the time in which Appellants should close their case. That prior to the Court's signing said order it was O. K. by J. B. Metcalfe, proctor for Appellants. That notwithstanding this order Appellants took no steps to have a medical examination made, although frequently requested so to do by proctor for Appellee, and cautioned and notified by proctors for Appellee that unless they had a medical examination made of Appellee prior to the 15th of November, that Appellee would refuse to consent to a medical examination being made at all.

After these proceedings were had, and the 15th of November had gone by, proctors for Appellants made application to the Court for an order requiring Appellee to submit to a medical examination, which order was properly refused by the Honorable District Judge. So that under these circumstances Appellant's proctors are quite correct when they state in their brief (page 42), "that the application to the Court for this order was not made expecting it to be granted." The Court will perceive from this that if any person has been endeavoring to keep anything in the dark in this case, and the truth from coming out, it has been the Appellants.

Proctor for Appellants is well acquainted with Appellee, had seen him and talked with him, and knew full well the critical condition he was in, and did not dare to hazard a medical examination by any fair physicians in the court below, for fear such an examination would more clearly show the condition Appellee was in, and consequently enhance the damages which the lower court would have awarded him. But after taking the opinion of the Honorable District Judge upon the evidence, and he having awarded to Appellee the full limit of the bond and amount which Appellee could recover, Appellants now make a great furore that a full, fair and honest investigation was deprived them.

This is the same tact they attempted to pursue before the Honorable District Judge in the District Court, even after they had repeatedly been notified that they could have a medical examination made if they desired one. That they were endeavoring to mislead the Honorable District Judge by such a course was clearly shown when proctor for Appellee in open court requested the court to name such physicians as the court saw fit, to have a medical examination made, to which proctor for Appellants objected, and refused to permit the court to name such physicians as the court saw fit, to make a medical examination. Whereupon the court refused to require the Appellee to submit to a medical examination made by physicians which Appellants saw fit to choose after they had peddled the testimony of Appellee's physicians around through the city in an endeavor to procure testimony from physicians to contradict the testimony of Appellee's physicians, so that they would know what

their physicians were going to testify in advance of the examination.

Appellants' course throughout this case has been one of unnecessary delay, and he has sought in every way to harass and embarrass Appellee. Even after the testimony was filed it was only after repeated efforts that Appellee was able to secure a hearing before the Honorable District Court on account of the efforts of Appellant's proctors to prevent such hearing as long as possible, giving all manner of excuses and engagements which they had so that they would not be able to attend the hearing.

V.

The rule of practice in the United States District Court for the District of Washington, Northern Division, is to enter judgment against the claimant, and, in case the stipulators do not perform the condition of their bond within ten days thereafter, to cite the stipulators to show cause why judgment should not be entered against them. This, the Court is not required to do, and could have entered judgment against the stipulators at the time of entering judgment against the claimant but, out of over-precaution for the protection of the stipulators, allows them a hearing in court prior to the entering of judgment against them. The condition of stipulator's bond is, that they will abide by and perform the terms and conditions of the decree; and in admiralty they are not permitted to appeal from the decree.

The first appeal taken should be dismissed, as having been prematurely taken, and the appeal taken by the

Stipulators should be dismissed, for the reason that Stipulators have no right to appeal in admiralty. It was necessary that judgment should be entered against the Stipulators as well as the Claimant, as the Stipulators's bond stands in the place of the vessel, and the vessel is the real respondent in this action. So that had the Court not cautioned Claimant and Appellant, out of consideration for Appellant, that his first appeal was premature and would likely be dismissed, the second appeal in all probability would never have been taken.

There is no error in the rulings of the Honorable District Judge in this respect.

VI.

The questions presented on this appeal are almost all purely questions of fact, and we submit that the findings of the Honorable District Judge upon all the points raised by Appellants are conclusive and binding upon this Court; that they are correct, and are fully supported by the evidence; and that the decree and findings of the Honorable District Judge should be confirmed.

We also submit that there is no merit in this appeal, and that costs, damages and interest should be awarded Appellee upon the appeal bond in the sum of two thousand five hundred dollars.

Respectfully submitted,

MARTIN, JOSLIN & GRIFFIN,

Proctors for Appellee.

MAY 1st, 1900.



